

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, :

Plaintiff, : Criminal Action No.

v. : 1:16-cr-10094-LTS

ROSS MCLELLAN, :

Defendant. :

----- x

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL  
Day 7

Tuesday, June 12, 2018  
8:37 a.m.

John J. Moakley United States Courthouse  
Courtroom No. 13  
One Courthouse Way  
Boston, Massachusetts

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Official Court Reporter  
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**P R O C E E D I N G S**

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is June 12th, the case of US vs. Ross McLellan, criminal action 16-10094 will now appear before this court.

THE COURT: I see all counsel and Mr. McLellan. Good morning.

MR. WEINBERG: Good morning, Your Honor.

MR. JOHNSTON: Good morning.

THE COURT: So any issues to discuss?

MR. JOHNSTON: There's one issue about a possible redaction on a phone call that we expect to be admitted into evidence tomorrow. The defense has requested that a crude joke be redacted that's in -- that comes in sort of the middle of a call between the defendant and a trader. We think part of it --

THE COURT: Do you have the transcript? Can I just look at it?

MR. JOHNSTON: Yeah. I'm handing up the transcript to 107. Page 3.

THE COURT: Page 3?

MR. JOHNSTON: It's in the middle. It will jump

1 out at you.

2 THE COURT: Oh. So who -- Dionisio is testifying,  
3 right?

4 MR. JOHNSTON: Yeah. Dionisio.

5 THE COURT: Dionisio. I'm sorry. And remind me  
6 who he is?

7 MR. JOHNSTON: He was an equity trader in Boston  
8 who worked on the desk.

9 THE COURT: So -- and the gist is this some sort of  
10 conversation, in your view, about like trading and --

11 MR. JOHNSTON: No, it's actually a particular --  
12 it's a particular transaction. It's part of the NTMA  
13 transition, where one of the things they did was broke up an  
14 ETF and traded the parts of it.

15 THE COURT: Oh, redeemed it essentially?

16 MR. JOHNSTON: Redeemed it. Exactly. And so  
17 Mr. Dionisio is the one doing the redeeming and he's having a  
18 conversation with the defendant about the progress of those  
19 efforts, and sort of in the middle of this conversation,  
20 there's this joke. And then it continues into talking about  
21 the conduct. So it is in the middle of the discussion of the  
22 activity itself and we -- the Government had agreed to redact  
23 half of it.

24 THE COURT: Which half were you willing to redact  
25 and which half is the other half that they --

1 MR. Johnston: The second -- the last two words.

2 MR. GOLDSTEIN: They want to keep in the expletive  
3 and cut out the other two words afterward.

4 THE COURT: So you're willing to take out "sex  
5 toy"?

6 MR. JOHNSTON: Yes.

7 THE COURT: And you want to take out "fucking sex  
8 toy."

9 MR. GOLDSTEIN: There's absolutely no need for the  
10 F-word. I would actually request that the entire McLellan  
11 response and the laughter be edited out of the tape. It has  
12 no relevance to the conversation. My understanding is the  
13 Government suggests that it goes to the nature or comfort of  
14 the relationship between Mr. McLellan and Mr. Dionisio.

15 This particular comment bears little to no  
16 relevance regarding nature or comfort of the relationship.  
17 They can get that otherwise. And certainly, the use of the  
18 expletive word does not, in any sense of the meaning, further  
19 any context for a relationship and so there's no need for it.  
20 It's an effort to paint Mr. McLellan as crude before the jury  
21 and I'd ask the Court to direct the Government to redact the  
22 McLellan line and the laughter and the jury will miss nothing  
23 in terms of the context.

24 THE COURT: Let me read the whole transcript.

25 MR. JOHNSTON: Okay. And it might be worthwhile

1 for you to actually hear it, as well. Because I think it has  
2 more relevance when you hear it in the context of the  
3 actual --

4 THE COURT: Fine. Let me read it first and then  
5 I'm happy -- it comes up tomorrow, so I can always listen to  
6 it at some point today.

7 MR. JOHNSTON: Because sometime this afternoon, we  
8 do have to --

9 THE COURT: We have to do whatever you're going to  
10 do to it?

11 MR. JOHNSTON: Exactly.

12 THE COURT: I agree. I'll read it and -- I can  
13 always listen to it at lunch.

14 MR. JOHNSTON: And just one small point to respond  
15 to Mr. Goldstein. The jury has already heard several F-words  
16 from the defendant in a couple of other phone calls. So it's  
17 not like they are -- they believe that, you know, he speaks  
18 like a nun or something. So I think it's -- it's a little  
19 bit much to say that somehow they need to -- he needs to be  
20 protected from the perception that he's a crude speaker. So  
21 I think that that argument doesn't really have much weight  
22 here.

23 MR. GOLDSTEIN: And very quickly, Your Honor. The  
24 fact that the jurors already received evidence of this, makes  
25 this particular comment cumulative and reduces any relevance



1 of the expletive in this context.

2 MR. FRANK: Except they haven't heard it when --

3 MR. JOHNSTON: They have yet to hear a phone call  
4 with Mr. Dionisio. They've heard phone calls with  
5 Mr. Boomgaardt, phone calls with Mr. Pennings.

6 THE COURT: I don't think he's arguing that the  
7 phone call is cumulative. I think he's arguing that the  
8 word, given -- in that sense, the word is cumulative. So in  
9 any event, I understand the argument from both of you. Let  
10 me read it and then I might ask you to listen to it at some  
11 point. And I'll do that in time, so that whatever redaction,  
12 whether it's just what you propose, or more, you can get done  
13 today, ready for tomorrow.

14 MR. FRANK: Just a couple of housekeeping matters,  
15 Your Honor, on timing. We may not need the time this  
16 afternoon or tomorrow afternoon. It just sort of depends on  
17 the pace this morning. Mr. Weinberg advised me last night  
18 that he expects only about another hour and 40 minutes to two  
19 hours of cross-examination. That would take us to the break.  
20 Depending on the length of redirect, the two victim witnesses  
21 who are lined up for today, their direct examinations are  
22 short. I expect their cross-examinations will be short, as  
23 well. So it's not impossible that we would finish by 1:00.

24 THE COURT: So after Pennings comes who?

25 MR. FRANK: Dean Johnson from Sainsbury's.

1 THE COURT: Essentially a victim witness?

2 MR. FRANK: Correct. And Roul Haerden from Dutch  
3 Doctors. And then we have another victim witness lined up  
4 for tomorrow. And then we have some other witnesses lined up  
5 for tomorrow, as well. So it's not -- these are --

6 THE COURT: So let me ask you this, in terms of  
7 timing. First of all, my general view is jurors are always  
8 happy to be let go early. They're always very unhappy to be  
9 told they're staying later than you told them. So if we  
10 finish earlier, fine. So having told them that they might  
11 sit these two afternoons, if we get through the three  
12 witnesses you just -- Pennings and the other two today and do  
13 whomever tomorrow and are done today and tomorrow at  
14 1 o'clock, then where does that put us in terms of your case?

15 MR. FRANK: We're very well on pace, Your Honor.  
16 In fact, that was the second issue I wanted to raise. We  
17 have one victim witness who is unable to fly in. This is one  
18 of the Irish victims. He's unable to fly in until Monday.  
19 His son is participating in a Special Olympics this weekend  
20 and he just can't leave until Monday morning. So he's unable  
21 to testify until Tuesday. There is some possibility we would  
22 not fill the day on Monday.

23 THE COURT: So right now, if he were to -- if he  
24 didn't have this issue and he could just come at your  
25 convenience, if he were like all other witnesses who just

1 came at your beck and call, and did whatever you wanted them  
2 to do.

3 MR. GOLDSTEIN: Not just witnesses, Your Honor --

4 THE COURT: What did you say?

5 MR. GOLDSTEIN: Nothing.

6 THE COURT: You would probably rest at the end of  
7 the day Monday?

8 MR. FRANK: It's not impossible. It just depends  
9 on the pace.

10 THE COURT: So Monday or Tuesday you would rest?

11 MR. FRANK: That's my expectation.

12 THE COURT: And so what if he -- what you're saying  
13 is maybe you end up resting on Tuesday, anyway. But maybe  
14 you would be all done at Monday at 11:00 or 12:00 and you  
15 have this one other witness and he just isn't available until  
16 Tuesday?

17 MR. FRANK: Yeah, it could be -- it depends on the  
18 pace. We could rest even -- we could be done on Monday even  
19 earlier than that. You know, there's one -- so --

20 THE COURT: Who comes -- so tomorrow is more --  
21 another victim witness that you said?

22 MR. FRANK: Yes.

23 THE COURT: And then who comes after?

24 MR. FRANK: And then Mr. Dionisio, Mr. Finocchi.  
25 Both traders.

1 THE COURT: Yes.

2 MR. FRANK: Possibly Ms. Morris, who is another  
3 transition analyst in the United States.

4 THE COURT: She would be about -- at the US  
5 Count 6?

6 MR. FRANK: Correct. It's possible she would go on  
7 Friday.

8 THE COURT: All right.

9 MR. FRANK: We expect a couple of agents, one agent  
10 to testify about those comments, the statements of the  
11 defense -- of the defendant.

12 THE COURT: Yes.

13 MR. FRANK: That's going to be very brief.

14 THE COURT: Right.

15 MR. FRANK: One agent who is just here to admit  
16 some documents.

17 THE COURT: Also very brief.

18 MR. FRANK: Also very, very brief.

19 What else on Friday?

20 MR. JOHNSTON: A representative of State Street,  
21 compliance.

22 MR. FRANK: That's not on Friday. He's on Monday,  
23 not testifying on Friday.

24 Oh, Mr. Clemmenson, who is another trader.

25 THE COURT: All right.

1 MR. FRANK: Mr. Kelly, who is another -- who is  
2 another victim witness.

3 THE COURT: All right.

4 MR. FRANK: So that should take us --

5 THE COURT: So you're going to finish some time  
6 during Friday and Tuesday depending on how the pace --

7 MR. FRANK: Well, we're not going to finish on  
8 Friday.

9 THE COURT: I mean, subject to --

10 MR. FRANK: We're on pace for Tuesday.

11 THE COURT: You're on pace for Tuesday. All right.

12 MR. JOHNSTON: Monday?

13 MR. FRANK: Monday is just a question mark of  
14 whether we fill the time.

15 THE COURT: Okay. And then how long do you think  
16 you have? Still same estimate or different estimate? In  
17 terms of your case.

18 MR. WEINBERG: Same estimate. We'll be able to  
19 give the Court a better estimate on Monday morning. But  
20 certainly, you know, we're well on schedule.

21 THE COURT: So there's no worry that we will not  
22 give the case to the jury that Thursday. The Thursday, two  
23 weeks from this Thursday.

24 MR. FRANK: No worry.

25 MR. WEINBERG: No worry at all.

1 THE COURT: And there's a reasonable -- it sounds  
2 to me like there's a reasonable possibility that they're  
3 actually going to get it earlier.

4 MR. FRANK: Yes, there is a possibility of a  
5 rebuttal case, but it would be brief.

6 THE COURT: Right. Your rebuttal case is likely to  
7 be the -- an expert, or an expert and another witness or two?

8 MR. FRANK: Correct.

9 THE COURT: Depending on what their case is.

10 MR. FRANK: Correct. We still don't know who their  
11 witnesses are.

12 THE COURT: Okay.

13 MR. FRANK: We're now more than a week into trial  
14 and we still haven't been able to narrow it from 26.

15 THE COURT: I suspect we might all three be in the  
16 same shoes.

17 Okay. Well, the reason I ask these questions just  
18 like I'm thinking -- having reserved the time with the  
19 jurors, thinking about whether we need to use it, but what  
20 you're really saying is we reserved -- if I gather it right,  
21 we reserve the time, in any event, say, the cross with  
22 Pennings goes longer, we have these -- today and tomorrow we  
23 have several witnesses from overseas and we need to -- in  
24 fairness to them, we need to get their testimony done and  
25 over so they can fly out.

1           And after that, the Friday -- Friday, 9:00 to 1:00,  
2 Monday 9:00 to 1:00, and Tuesday, 9:00 to 1:00, is more than  
3 ample for you to finish your case.

4           MR. FRANK: That's my expectation.

5           THE COURT: I mean -- right.

6           MR. FRANK: But in any event, we're easily on  
7 track.

8           THE COURT: Right. On pace.

9           And then after that, even if you don't -- if he  
10 rests Tuesday at 1 o'clock, that Wednesday, Thursday, Friday,  
11 Monday, Tuesday, is more than enough time for you and that  
12 still leaves --

13          MR. WEINBERG: More than enough, Your Honor.

14          THE COURT: Okay.

15          MR. FRANK: Well, he might be able to start on  
16 Tuesday, actually.

17          THE COURT: Right. I'm just saying, if you went  
18 longer, worst-case scenario.

19          Okay. So I won't address it with the jurors.  
20 We'll see where we are at 11:00. I'll give them an update at  
21 11:00 and if we release them early, we release them early and  
22 then -- there's no -- I guess if we didn't sit today, I'd  
23 rather not -- I'd rather not sit -- like if we didn't sit  
24 this afternoon, would we definitely not need to sit tomorrow  
25 afternoon?

1 MR. FRANK: Yes, Your Honor. That's right.

2 THE COURT: Okay. Fine, because I don't want to  
3 make them, having told them both days, let them go today, and  
4 then say oops, tomorrow.

5 MR. FRANK: As long as we get these two witnesses  
6 done today, we can do Mr. McKnight first thing tomorrow and  
7 he'll be able to make his flight.

8 THE COURT: I see. Okay. Fine. All right. Does  
9 that make sense to you, too, Mr. Weinberg, in terms of the  
10 amount of cross for those witnesses?

11 MR. WEINBERG: It does, Your Honor.

12 THE COURT: Okay.

13 MR. FRANK: I am serious, Your Honor. It's now  
14 Tuesday of the second week of trial. They haven't narrowed  
15 their witness list, at all.

16 THE COURT: I think we should talk about that at  
17 1 o'clock.

18 MR. FRANK: Okay.

19 MR. WEINBERG: Judge, I'm being told by Mr.  
20 Goldstein that the cross-exam of one of the two witnesses  
21 that Mr. Frank intends to called today after the Pennings  
22 cross, you know, might be longer than I had expected. It  
23 might be up to 45 minutes, so we may need this afternoon to  
24 give us the assurance of both the witnesses being finished.  
25 So I would not -- I would defer telling the jury.



1 THE COURT: I think what we should do at 11:00, is  
2 discuss who's coming and how long the cross is. Maybe we  
3 finish Pennings at 11:00. Maybe -- we'll have a better idea  
4 of where we are at that point.

5 MR. FRANK: That sounds reasonable.

6 THE COURT: I'm certainly not going to tell them  
7 now that we're not sitting this afternoon.

8 MR. FRANK: Okay.

9 THE COURT: All right. Okay. I think that's  
10 everything from me.

11 Anything else for you? Okay. All right. We'll  
12 break.

13 Do you have the tape right here?

14 MR. JOHNSTON: Yes.

15 THE COURT: Why don't you just play it right now.

16 MR. JOHNSTON: Do you just want it --

17 THE COURT: Play the whole thing. It's not very  
18 long, right?

19 MR. JOHNSTON: No, it's not.

20 THE COURT: 3 minutes and 17 seconds.

21 MR. GOLDSTEIN: Your Honor --

22 THE COURT: Do you not want to play it in open  
23 court?

24 MR. GOLDSTEIN: Well, I was going to ask if we can  
25 do it at sidebar. I mean, the nature of the comments have

1 already been heard, so I think it's fine.

2 MR. FRANK: Everyone knows what he said, Judge.

3 THE COURT: It's -- none of the witnesses are here.

4 MR. JOHNSTON: We're just trying to protect the  
5 jury here.

6 THE COURT: And there's no witnesses in the  
7 courtroom?

8 MR. FRANK: No.

9 THE COURT: Okay. Fine.

10 MR. FRANK: Why isn't it coming out of your  
11 speakers?

12 THE DEPUTY CLERK: I don't know. Are you plugged  
13 in?

14 MS. LEAHY: With the dock, we've never had this  
15 trouble. Interesting.

16 THE DEPUTY CLERK: Do you want me to call systems?

17 THE COURT: I'll tell you what, for the moment, why  
18 don't you bring it over for sidebar, because you just play it  
19 on the laptop.

20 Got it.

21 (Audio plays.)

22 THE COURT: So the point of those -- that line and  
23 the laughter is what?

24 MR. JOHNSTON: Shows the comfort that the defendant  
25 has with the trader who he's instructing to take a

1 significant markup on millions of shares for the NTMA.

2 THE COURT: I think you should take it out. I  
3 think it's pretty clear. You have a lot of comfort from the  
4 context. They're back and forth, including all right, pal,  
5 fine with me, the way they're talking back and forth. They  
6 seem quite comfortable. I don't think you need that and I  
7 think it just adds, under 403, the balancing of the -- the  
8 probative value is limited, especially in the face of the  
9 other -- the nature of the conversation and the other things,  
10 it doesn't have any particular substantive value other than  
11 the comfort. You have other evidence in the conversation of  
12 comfort and there's unfair prejudice. So on balance, I  
13 strike the -- the --

14 MR. JOHNSTON: Your Honor, can we -- can it be --  
15 sounds like a bleep and then we get laughter, because I do  
16 think that that is an important part.

17 MR. FRANK: Well, I just want to make one other  
18 point, Your Honor, if I may. They've heard all of these  
19 witnesses using that kind of foul language, the F-word. I'm  
20 not talking about the words that come after it. It's  
21 actually misleading to the jury to suggest that this  
22 defendant speaks differently than everyone else they've heard  
23 from, including other words they've heard him say, and that  
24 he's somehow got a pristine vocabulary.

25 THE COURT: I don't think it -- I'm not scrubbing

1 transcripts so that the defendant sounds like a choir boy,  
2 but the particular phrase here is different than just using  
3 the F-word and it's of a different caliber than just  
4 language. And it's of something different, that has no  
5 relevance to the case. And to say just delete the last  
6 two words, it only invites people to speculate as to what he  
7 said, because nobody would -- it doesn't make sense why the  
8 laughter comes without it.

9 And the reason you want, which I understand and is  
10 a reasonable reason to want to put it in, it seems pretty  
11 clear, when I listen to the tone that, to me, they seem  
12 comfortable with each other, especially at the end. And so  
13 I'm not -- I think -- I can't recall at the moment whether  
14 they've heard other tapes or Mr. McLellan has used language  
15 like that. But if they haven't, it's not because I don't  
16 think I've struck it all and I'm not striking it for that  
17 reason. If you just use that word, it doesn't -- I wouldn't  
18 see any particular reason to strike it. It's just that  
19 context.

20 MR. JOHNSTON: So just to be clear, what is the  
21 Court ordering to be struck?

22 THE COURT: Line 9 and 10.

23 MR. JOHNSTON: So no laughter can appear on the  
24 tape?

25 THE COURT: Why can't they have the laughter

1 without line 9.

2 MR. JOHNSTON: That's fine. We can keep the  
3 laughter in and they just won't hear "sounds like" --

4 MR. GOLDSTEIN: If that's the balance the Court  
5 wants to strike is fine. I think the laughter is irrelevant  
6 without the comment, but if you want to keep it in there,  
7 then --

8 THE COURT: Yeah, strike line 9. I don't have a  
9 problem with the laughter. There's nothing unfair about the  
10 laughter, and to the extent it shows they're comfortable with  
11 each other, because they're laughing, that's fine.

12 Okay. So just line 9.

13 All right. Maria, did the knock mean they're all  
14 here?

15 THE DEPUTY CLERK: (Nods head.)

16 THE COURT: All right. Go get them.

17 Oh, go get the witness first.

18 MR. WEINBERG: And does Your Honor mind if I walk  
19 around --

20 THE COURT: No. Go right ahead.

21 Is it true, Mr. Frank, that the only witnesses not  
22 at your beck and call are beck and Paul?

23 MR. FRANK: No, Your Honor, as I've actually made  
24 clear, there was a witness in London, Samina Vernon --

25 THE COURT: It's just a joke.

1 MR. FRANK: But it's actually --

2 THE COURT: No, it's just a pun.

3 MR. FRANK: Oh, beck and Paul.

4 THE COURT: Yes.

5 MR. FRANK: I got that. Thank you. That is funny.

6 (The jury enters the courtroom.)

7 THE COURT: Good morning, ladies and gentlemen.

8 Nobody discussed the case with anyone, among yourselves, or  
9 otherwise? No one did any independent research?

10 Good. All right. We resume. Mr. Pennings, I  
11 remind you you remain under oath.

12 Go ahead, Mr. Weinberg, you may continue with your  
13 cross-examination.

14 MR. WEINBERG: Thank you very much, Your Honor.

15 **EDWARD PENNINGS**

16 having been previously duly sworn, testified as follows:

17 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT, Cont.**

18 BY MR. WEINBERG:

19 **Q.** Mr. Pennings, I want to direct your attention, first, to  
20 your first statement made on April 11, 2013, to the City of  
21 London Police. Do you recall a handwritten statement made to  
22 the City of London Police?

23 **A.** I recall my lawyer writing something there, yes.

24 **Q.** And do you recall signing that statement, Mr. Pennings?

25 **A.** Yes.

1     **Q.** Do you recall saying to the City of London Police, "I  
2     categorically deny any offense of fraud by abuse of position  
3     or conspiracy to defraud"?

4     **A.** I may have -- if it's not in front of me, I don't know  
5     the exact words, but something along those lines.

6     **Q.** I'm going to put it on a screen just for you, so I can  
7     ask you whether or not the words that you read refresh your  
8     recollection as to what you said to the City of London  
9     Police.

10                     Paragraph 1?

11     **A.** That I recognize, yes.

12                     THE COURT: Just read it to yourself and then he'll  
13     ask you another question.

14     BY MR. WEINBERG:

15     **Q.** And do you now recall saying to the City of London  
16     Police, in a prepared statement in 2013, "I categorically  
17     deny any offense of fraud by abuse of position or conspiracy  
18     to defraud"?

19     **A.** I did sign that, yes.

20     **Q.** Do you also agree that you said to the City of London  
21     Police in 2013, quote, "The manner in which trades were  
22     executed on behalf of Royal Mail Pension trustees, I believed  
23     at all times was within the terms of the contract between  
24     State Street and Royal Mail"?

25     **A.** That's part of the same notes, so, yes.

1       **Q.** Are those words that you used in the same prepared  
2 statement to the City of London Police?

3       **A.** It's the words that my lawyer wrote and I signed off on,  
4 yes.

5       **Q.** You adopted those words by signing them, is that correct,  
6 Mr. Pennings?

7       **A.** That's fair to say.

8       **Q.** You knew this was being presented to the City of London  
9 Police?

10       **A.** That's correct.

11       **Q.** And you knew the City of London Police was conducting an  
12 investigation?

13       **A.** I was just brought into the police, so, yes.

14       **Q.** Third, "The manner in which such trades were executed was  
15 authorized by State Street management."

16               Do you recall adopting those words that were  
17 written by your lawyers?

18       **A.** Yes.

19       **Q.** And do you also recall, "The manner in which such trades  
20 were executed, I believe, was consistent with normal industry  
21 practice."

22               Are those words that were written by your lawyer  
23 that you adopted by signing this statement?

24       **A.** Yes.

25       **Q.** Did you make a second statement to the City of London



1 Police?

2 **A.** My lawyer made -- we did put in a written submission,  
3 yes.

4 **Q.** And that was about seven months, eight months later on  
5 January of 2014?

6 **A.** I don't know the exact date.

7 **Q.** Okay. Well, let me show you page 1 of that and ask you  
8 to see -- the first paragraph dates back to the handwritten  
9 statement of April 11, 2013?

10 **A.** This screen is really blurry. I don't know.

11 THE COURT: We'll see if we can fix that.

12 THE WITNESS: It's -- oh, better.

13 BY MR. WEINBERG:

14 **Q.** I'm going to be directing your attention to paragraphs 5  
15 through 8. So perhaps we can make them easier to see.

16 Can you see them now?

17 **A.** Yes.

18 **Q.** Did you --

19 THE COURT: Do you want him just to read them over  
20 first, or do you want to ask him?

21 MR. WEINBERG: I can go one paragraph at a time --

22 MR. FRANK: I object to the reading, Your Honor.

23 He can ask the witness whether he remembers saying something,  
24 but he's not permitted to read from a document.

25 BY MR. WEINBERG:

1       **Q.** Do you remember saying the following --

2               THE COURT: Well, I don't know -- I think it just  
3 depends on the question. So I'll take it question by  
4 question.

5               MR. WEINBERG: I'll frame it to combine both.

6       BY MR. WEINBERG:

7       **Q.** Do you recall, Mr. Pennings, on January 31, 2014,  
8 submitting a typewritten statement that was prepared by your  
9 lawyers on your behalf to the City of London Police?

10      **A.** They submitted a statement, yes.

11      **Q.** And that indicated, did it not, that the City of London  
12 Police had not ended their investigation between April 2013,  
13 and the date of this statement, January 2014, correct?

14      **A.** It was still ongoing, yes.

15      **Q.** And in that statement, you and your lawyers were making  
16 representations to the City of London Police that you wanted  
17 them to rely on and believe; is that correct?

18      **A.** I wanted them to drop the investigation, yes.

19      **Q.** And you wanted them to drop the investigation, in part,  
20 relying on your submissions, your statements to them,  
21 correct?

22      **A.** I'll take that -- well, I didn't think of it like that,  
23 but that's fair to say.

24      **Q.** The fact, is it not, that one of the reasons that you  
25 submitted this statement was to persuade the City of London

1 Police that you were innocent, correct?

2 **A.** It was my defense. Yes, I kept using the same story,  
3 yes.

4 **Q.** And your lawyers prepared these things for you, correct?

5 **A.** They did, yes.

6 **Q.** And they relied on what you told them to prepare these  
7 statements --

8 MR. FRANK: Objection to what his lawyers relied  
9 on, Your Honor.

10 THE COURT: Overruled.

11 BY MR. WEINBERG:

12 **Q.** Do you understand that your lawyers were relying on what  
13 you told them?

14 **A.** My lawyers had -- the facts that we had at the time,  
15 which wasn't everything. And a lot of it was from memory, as  
16 well. So, yeah, the story was spun the way we had been  
17 saying it for a number of years at the time.

18 **Q.** Did your lawyers know that you were spinning a false  
19 story?

20 MR. FRANK: Objection to privilege, Your Honor.

21 THE COURT: Sustained as to that.

22 BY MR. WEINBERG:

23 **Q.** Did you understand that your lawyers understood that you  
24 were spinning a story, rather than telling a truth?

25 MR. FRANK: Objection. Privilege, Your Honor.

1 MR. WEINBERG: It's a disclosure --

2 THE COURT: Overruled. That's definitely --

3 THE WITNESS: It was my belief that the lawyer  
4 understood what happened and they were acting in my best  
5 interest. This was designed to, you know, again, defend  
6 myself.

7 BY MR. WEINBERG:

8 Q. Is it your understanding that your lawyers presented  
9 false statements to the City of London Police on your  
10 defense?

11 A. It was a false statement, so they may not have -- I don't  
12 know what their thinking was. I don't know how lawyers  
13 think, to be honest.

14 Q. You spoke to them and they were relying, at least in  
15 part, on what you told them, correct, Mr. Pennings?

16 A. I would assume they would rely on what I said, yes.

17 Q. Is there anything in these statements that is  
18 inconsistent with what you told them?

19 MR. FRANK: Your Honor, I'm not sure where he's  
20 going with this, but I object to the attempt to use the  
21 attorney's advocacy in some misleading way and we can discuss  
22 it at sidebar, if Mr. Weinberg --

23 MR. WEINBERG: I would like to, because I think  
24 this falls into an exception of the privilege.

25 THE COURT: All right.

1 (The following discussion held at the bench.)

2 MR. WEINBERG: It's a crime of fraud. He just said  
3 that his lawyers presented the fraudulent statement to the  
4 City of London Police. And whether his lawyers knew it or  
5 not, the crime fraud exception is when a lawyer is being used  
6 by a client to facilitate a fraud.

7 MR. FRANK: Whether the lawyers committed a crime  
8 here is not an issue. The defendant has admitted that he  
9 lied. He has admitted that he told the lawyers a story and  
10 that the lawyers advocated on his behalf and the lawyers may  
11 or may not have been complicit in it, but the lawyers are not  
12 on trial.

13 THE COURT: No, the lawyers is not on trial. But  
14 if he told the lawyers --

15 MR. FRANK: What he told the lawyers is privileged,  
16 Your Honor.

17 THE COURT: Well, but not if he used them to  
18 perpetrate a crime. Then the crime fraud exception would  
19 apply, right?

20 MR. FRANK: But we shouldn't be delving into it.

21 MR. JOHNSTON: He objected to even going into this  
22 line of questioning to begin with.

23 MR. WEINBERG: Do two prosecutors need to argue one  
24 legal issue?

25 MR. FRANK: You have two defense lawyers here.

1           MR. WEINBERG: And Mr. Goldstein has restrained him  
2 very carefully.

3           MR. FRANK: Mr. Goldstein has been speaking loudly  
4 and audibly that the jury can hear him throughout your  
5 cross-examination.

6           MR. WEINBERG: I thought he's been thinking  
7 positively about --

8           THE COURT: All right. So a couple things. First,  
9 all of you, relax a little bit. One, okay -- one lawyer in  
10 front of the jury standing up for objections, at sidebar,  
11 it's different, as a general matter, I don't mind. I don't  
12 think Mr. Johnston is out of order by making a comment. I  
13 haven't heard Mr. Goldstein making comments audibly. If he  
14 has -- if anybody's making comments audibly, they're  
15 appropriate -- that I'm not responding to, that if you think  
16 it's improper, you need to bring it to my attention.

17           MR. FRANK: It just happened.

18           THE COURT: All right, because I haven't heard it.  
19 I didn't hear it then. And it would be consistent with my  
20 general understanding. So as a general matter, I get it,  
21 that things get a little heated, but my suggestion, as a  
22 general matter is you focus on each issue at hand, rather  
23 than trying to prior issues that people have done, or what  
24 have you. Someone made a prior speaking objection or not.

25           So as to the issue at hand --

1 MR. FRANK: If I can just articulate, Your Honor.  
2 First of all, the witness has an attorney in the room. It's  
3 not the attorney from that time. So if the witness needs to  
4 be counselled about his privilege, I would ask that he be  
5 given an opportunity to do that.

6 Number two, I objected to the very initial  
7 questions about what you said to your lawyer. There is no  
8 reason to go into that and there's no --

9 THE COURT: What is the purpose, aside from the  
10 crime of fraud exception?

11 MR. WEINBERG: The purpose, Judge, is that the  
12 witness is depicting the statements as false. I don't  
13 necessarily agree with that, but that's what he said.

14 THE COURT: Right.

15 MR. WEINBERG: He then says his lawyers prepared  
16 those, even though he ends up signing them. So he's trying  
17 to slide away from those being his statements.

18 MR. FRANK: No, he's not.

19 MR. WEINBERG: Steve, let me finish.

20 THE COURT: Let him finish.

21 MR. WEINBERG: But the principal thing is, that if  
22 he lied to his lawyers and then adopted those lies, that's a  
23 different level of falsity. It's whether it's 608(b), or  
24 whether it's part of the inconsistency. He is essentially  
25 saying that my lawyer's prepared statements on my behalf,

1 based -- that I want him to admit, based on his -- what he  
2 now says are lies to his lawyers, which is a different --  
3 it's another lie. It's lies to the tribunal, it's lies to  
4 the police.

5 THE COURT: Here's the line, I think. You can --  
6 you can impeach him on a fact, or you can elicit the fact  
7 that this statement is here, although written out in the  
8 sense of written out by the lawyers, are based on  
9 communications with him. I think that's fair. I don't think  
10 that goes into any unfair privilege. It's, in for  
11 substance -- I mean, obvious there's no way that the lawyer  
12 could have written the statement without talking to him. So  
13 I think you can get that.

14 I think that, like, getting into those particular  
15 communications with the lawyer is different. And the only  
16 reason why crime fraud exception issue here, it seems to me,  
17 that I think you can cross him on the statements -- you can  
18 tie him to the statements that the statements were prepared  
19 by the lawyers based on their communications without getting  
20 into -- without going over all the particulars of their  
21 communications.

22 MR. WEINBERG: Just intending to get him to say  
23 that he lied to his lawyers?

24 MR. FRANK: No, that's not the issue, Your Honor.

25 MR. WEINBERG: He did.



1 MR. FRANK: We don't know it. The lawyers are not  
2 here and whether he lied to his lawyers is irrelevant. The  
3 statement is a lie. He's admitting that. He signed the  
4 statement and adopted that. He's admitted that. He's  
5 admitted he's had communications with the lawyer, but the  
6 substance of the communications with his lawyer are  
7 privileged and that should not be delved into.

8 THE COURT: But he lied to his lawyer in order to  
9 perpetrate -- is the statement under oath?

10 MR. WEINBERG: No, it's signed by him, not under  
11 oath.

12 THE COURT: Or obstruction -- we can go to the laws  
13 of Great Britain, but if he lied to the lawyers or got his  
14 lawyers to file something with the City of London, why  
15 wouldn't the fraud exception apply?

16 MR. FRANK: Because first of all, it's under  
17 British law. Second of all, I don't know what the parameters  
18 are. I don't know what the parameters of the attorney-client  
19 relationship in Britain. So all of those issues that should  
20 have been briefed in advance -- what he's got is the witness  
21 saying over and over and over and over again, I like --

22 THE COURT: Why don't you do it this way: You can  
23 get he lied in his statement, you told the lawyers that --  
24 they prepared this statement, based upon what you told them.  
25 Okay. And you told them these things.

1 MR. FRANK: That's the same thing, Your Honor.  
2 That's getting into the substance of this communications with  
3 his lawyers.

4 MR. WEINBERG: It amazes me that, given the  
5 arguments that I've heard from the United States Attorney's  
6 Office, and the crime fraud exception, that Mr. Frank doesn't  
7 think this is a paradigm.

8 THE COURT: But the question is what is the  
9 interpretation of the law, whether it be British privilege  
10 and British law, none of which at the moment any of us know.

11 MR. WEINBERG: I can't represent that I know the  
12 scope of the exceptions in the British --

13 MR. FRANK: I'll represent that I know them, but  
14 that may not be true.

15 MR. GOLDSTEIN: That's the second thing he said,  
16 because I want to respond to another thing. I categorically  
17 did not make any statements in front of the jury, number one.  
18 Number two, the only reason we're having this debate is  
19 because the witness opened the door in his conversations by  
20 answering Mr. Weinberg's question, rather than saying, yes,  
21 these are my prior statements. He's continuing to try to  
22 blame his lawyer for the prior statements.

23 MR. FRANK: No, he's not. He's unquestionably  
24 adopted those statements repeatedly. He simply testified  
25 factually that the handwriting on the document was his

1 lawyer's handwriting. They wrote the same --

2 MR. GOLDSTEIN: That's Mr. Frank's version.

3 MR. FRANK: That's what he said and he also said  
4 that these statements were typed by his lawyer, that's also  
5 unquestionably true. The actually -- but -- you have said --  
6 and he responded to your question that you adopted  
7 statements, yes, which frankly, I should have objected to,  
8 because the adoption is a legal term of art that he's not  
9 familiar with. He's sitting up there uncounseled.

10 THE COURT: He's not uncounseled. He's got a  
11 lawyer in the courtroom.

12 MR. FRANK: But he doesn't -- Your Honor.

13 THE COURT: That lawyer wasn't born yesterday. I  
14 mean, I don't know who he is, but he's a lawyer at some big  
15 firm.

16 MR. FRANK: He's a former EDNY prosecutor, Judge.  
17 His integrity is unimpeachable.

18 THE COURT: There you go. So he's not a potted  
19 plant. He wouldn't be afraid to stand up. He knows how to  
20 ask to be heard.

21 MR. WEINBERG: Former Department of Justice public  
22 integrity prosecutor.

23 THE COURT: The jury doesn't think the word  
24 "adopted" is a legal term. They understand -- the way I  
25 understood the question, the way I think they understood it,

1 is did you sign these, did you make these your own.

2 MR. FRANK: Your Honor, here's what we don't object  
3 to. Did you speak with your lawyers, did your lawyers  
4 prepare the statement? Did you sign the statement? Did you  
5 adopt the statement? Did you represent it to the City of  
6 London Police to be true? All of those things are  
7 completely -- you know.

8 THE COURT: This is cooperation agreement, did you  
9 waive the privilege?

10 MR. FRANK: No.

11 MR. GOLDSTEIN: Why did you lie to your lawyers?

12 MR. FRANK: No, he cannot ask him that, because you  
13 can't respect what British law is with respect to that. For  
14 example, I know that in Dutch law you can --

15 MR. GOLDSTEIN: Steven, it's an act of dishonesty,  
16 it's completely admissible in 608(b), specific to his  
17 conduct. Lying to a lawyer is an act of dishonesty.

18 MR. FRANK: Lying to a lawyer may be privileged and  
19 you can't represent otherwise. For example, lying to a  
20 prosecutor is not a crime --

21 MR. GOLDSTEIN: Federal rules of evidence control  
22 here.

23 THE COURT: Stop, stop. You know what, both of  
24 you, I'm the person deciding. It doesn't help talking over  
25 the judge.

1 MR. FRANK: The other point, Your Honor, is it's  
2 cumulative. He's admitted the same statements to be lies  
3 over and over and over again. Whether the lawyer is the  
4 recipient of it or not --

5 MR. WEINBERG: It's an amazing objection, given the  
6 length and duplication of your direct exams.

7 THE COURT: What do you want to ask him?

8 MR. WEINBERG: I want to ask him whether or not the  
9 statements -- the statements made to his lawyers -- let me  
10 rephrase that. What I want to do is get him say that  
11 statements that he signed were untrue. They were authored by  
12 his lawyers -- they were authored based, at least in  
13 substantial part, on what he said to his lawyers and when  
14 he -- reviewing the statements and in any way change them --

15 THE COURT: You can ask him if he reviewed the  
16 statements, you can ask him if the statement was a lie, you  
17 can ask him if it was prepared after he met with his lawyers.  
18 You can ask him if he told the lawyers after he reviewed it,  
19 that this was a lie.

20 MR. FRANK: Well, that I will object to. If it's  
21 based on communications with his lawyers, that's one thing.  
22 He then signed it, that's another thing, but again, what he  
23 told his lawyers about the statement, unless counsel is  
24 prepared to represent that somehow there's a crime fraud  
25 exception under British law.

1 MR. WEINBERG: He's in a United States courtroom,  
2 subject to rules of evidence by 608(b).

3 THE COURT: You can ask him if he signed the thing,  
4 because the point is that he signed it and you can ask him if  
5 before --

6 MR. FRANK: We wouldn't object to him being asked,  
7 did you protest the statement.

8 THE COURT: Yes, you can ask him things like that,  
9 because otherwise, it's unfair. So you can certainly ask him  
10 that. That gives you what you want.

11 MR. WEINBERG: Good enough. Not everything,  
12 though.

13 (Bench conference concluded.)

14 THE COURT: So just so you understand, ladies and  
15 gentlemen of the jury, there are -- the issue that I've been  
16 discussing with the lawyers and what relates here is -- our  
17 question -- you've probably heard something called the  
18 attorney-client privilege. And so we're just talking about  
19 what the lines are, what the nature of that privilege is,  
20 with respect to various questions that have been or will be  
21 asked, in terms of what would be admissible, because you're  
22 entitled -- what's privileged -- what's --

23 Privileged communications are communications you  
24 don't have to reveal. And so certain kinds of conversations  
25 between you and your lawyer are privileged. Not every

1 conversation between you and a lawyer is privileged. And so  
2 we're talking about -- we were talking about that. That's  
3 what it is. I think we've resolved it, both with the  
4 Pennings question, and that so maybe we've resolved it as to  
5 the going-forward questions as well, so we don't have to take  
6 another sidebar.

7 Go ahead.

8 MR. WEINBERG: Thank you, Your Honor.

9 BY MR. WEINBERG:

10 Q. To bring us back to where we were, Mr. Pennings, this  
11 prepared statement was signed by you, was it not?

12 A. I believe so, yes.

13 Q. And it was presented by you?

14 A. I'm not certain. Is it signed by me? Yes, it is.

15 Q. And you understood at the time that it was to be  
16 presented to the City of London Police, in an effort to  
17 convince them to drop their investigation of you?

18 A. Yes, as a defense document, yes.

19 Q. And let's go to paragraph 6 of page 1 of the statement.

20 Do you recall signing a statement prepared by your  
21 lawyers, which said to the City of London Police,  
22 quote, "Without limitation, I deny that any State Street  
23 client, which is the subject of this investigation, was  
24 overcharged" ?

25 A. That's part of the statement.

1       **Q.** You read the statement before signing it?

2       **A.** Yes.

3       **Q.** Didn't tell your lawyers to change paragraph 6, did you?

4       **A.** No, I did not.

5       **Q.** Understood paragraph 6, written by your lawyers, was  
6 written in part based on what you had disclosed to them?

7       **A.** Fair to say.

8       **Q.** Paragraph 7, does it refresh your recollection that  
9 included in this statement written by your lawyers, signed by  
10 you, and presented to the City of London Police in 2014 are  
11 the following, "I have always accepted that undisclosed  
12 revenues were earned by State Street affiliates in relation  
13 to transactions undertaken on behalf of certain clients"?  
14 Are those your words?

15       **A.** That's part of the statement, as well, yes.

16       **Q.** "However, at all times I acted in the belief and  
17 understanding that the contracts with such clients and  
18 relevant regulations permitted State Street to take  
19 undisclosed revenues."

20               Was that the words of a statement written by your  
21 lawyer and presented on your behalf to the City of London  
22 Police?

23       **A.** That's part of the statement. And I think, you know, the  
24 spin here, the lie is, essentially --

25       **Q.** Mr. Pennings, answer my --



1 MR. FRANK: I would ask that the witness be  
2 permitted to finish his answer.

3 THE COURT: The question is simply, is that the  
4 statement that was submitted.

5 MR. FRANK: Well, the witness started to answer  
6 further. Mr. Weinberg did not object, but then when he saw  
7 where the witness was going, he objected.

8 THE COURT: So we're not going to have speaking  
9 objections. The question is just yes/no -- as I understand  
10 the question.

11 THE WITNESS: It's part of the statement.

12 BY MR. WEINBERG:

13 Q. And is part of the statement in the conclusion of that  
14 paragraph, Mr. Pennings, "Further, the position was known  
15 about and authorized by those in senior positions, plural,  
16 within State Street."

17 Yes or no?

18 A. That's also part of the statement.

19 Q. Was it also part of the statement, in paragraph 8, "I  
20 have submitted detailed information to the employment  
21 tribunal, also to the FCA, in relation to the matters which  
22 underlie this investigation. And if necessary, it would be  
23 my intention to rely on those submissions."

24 A. Again, it's the same statement, but I'll happily explain  
25 the context of it.

1 Q. I want you to --

2 MR. WEINBERG: Can we turn to the next page,  
3 please.

4 BY MR. WEINBERG:

5 Q. I want you to look at paragraph 15 and tell me whether  
6 it -- these words were part of the statement that you signed  
7 and submitted to the City of London Police.

8 "While State Street affiliates earned revenues from  
9 certain clients, which were not disclosed, my belief is that  
10 if one analyzes the transactions, they will all demonstrate  
11 that clear value and savings were provided to the clients and  
12 that the total implementation shortfall, which is the  
13 standard industry benchmark for measuring transition costs,  
14 came in at or below client expectations."

15 Was that part of your submission to the City of  
16 London Police?

17 A. It's part of the submission and it's true.

18 Q. Paragraph 16, was it part of this submission, quote, "The  
19 practice of charging a portfolio management fee with  
20 undisclosed revenues then being generated by trading  
21 affiliates was, I believe, common industry practice. It was  
22 adopted by State Street in response to similar practices by  
23 our competitors, in order that we could compete with them."

24 Was that part of the statement submitted on your  
25 behalf to the City of London Police?

1       **A.**   Yes.

2       **Q.**   Was it also part of the statement, "My recollection is  
3       the practice of earning undisclosed revenues was widely  
4       discussed in the industry"?

5       **A.**   Yes.

6       **Q.**   "And without limitation, I understood that similar  
7       practices were used by other banks, including Citigroup,  
8       Nomura, Bank of New York, Goldman Sachs, Credit Suisse, and  
9       Morgan Stanley."

10      **A.**   I believed that they also used undisclosed revenues, yes.

11      **Q.**   "My belief in that regard came from talking to people  
12      within the financial services sector, some of whom had worked  
13      at these institutions who were later hired by State Street.  
14      It was also my belief that investment consultants, including  
15      those who were retained in relation to transactions relevant  
16      to this investigation also knew undisclosed revenues to be  
17      part of the industry."

18      **A.**   That's part of the statement, yes.

19      **Q.**   Turning to the next page, paragraph 19. Do you recall  
20      representing to the City of London Police, in 2014 in this  
21      statement, quote, "Without limitation, I understood that the  
22      following were aware of the charging structure employed in  
23      relation to some, if not all, of the deals now under  
24      investigation."

25                      And you then listed a series of people, correct?

1       **A.** It's part of the statement, correct.

2       **Q.** Ross was one, correct?

3       **A.** Yes.

4       **Q.** Paul McGee was second?

5       **A.** Yes.

6       **Q.** Ian Holden, your head of trading, was third?

7       **A.** Yes.

8       **Q.** Rick Boomgaardt was fourth?

9       **A.** Yes.

10      **Q.** Steve Smit, who was the head of the SS -- the State  
11      Street Global Markets in London was fifth?

12      **A.** Yes, I don't know the extent of his knowledge, but I  
13      mentioned him, yes.

14      **Q.** Well, you said, it listed him, quote, "Without  
15      limitation, I understood that the following were aware of the  
16      charging structure employed in relation to some, if not all,  
17      of the deals now under investigation."

18               He is one of the persons you identified as knowing  
19      about a charging structure that included nondisclosed  
20      revenues, correct?

21      **A.** It's part of the statement.

22      **Q.** Were you lying about Mr. Smit?

23      **A.** I don't know. I don't know what he knows. He may have  
24      been on an e-mail, so I don't know. I just took that as he  
25      knows and I'm not sure if that's correct or not.

1 Q. Well, when your written statement was submitted to the  
2 City of London Police, you didn't have any indecision. You  
3 said he knew.

4 A. I know, but I've also said that I wasn't truthful.

5 Q. So you were not truthful about accusing Mr. Smit, to the  
6 City of London Police, as being one of the people that knew  
7 of this charging structure of nondisclosed revenues?

8 A. What I'm saying is that I am not 100 percent sure if he  
9 knew, or if he did not know.

10 Q. But you said here --

11 A. I said it. I know that. I wasn't overly truthful in the  
12 statement. Okay. But I am now saying that I am not  
13 100 percent certain if he knew or not. He may have been on  
14 an e-mail, he may have read it, he may not have read it. I  
15 don't know, but he could have known.

16 Q. You didn't hesitate to identify him as a person that knew  
17 it and --

18 A. No, because it helped me at the time. I thought it  
19 helped me at the time and I was defending myself.

20 Q. So you were prepared, when it helped you, to identify  
21 people to the City of London Police, correct?

22 A. I don't know. I think I've answered the question. I  
23 haven't been truthful in the statement.

24 Q. Stuart Glenister, did he know?

25 A. I believe he may. He was in some of the meetings.

1 Q. Certainly knew?

2 A. It was a long time ago. I think he probably did. He  
3 wasn't necessarily involved in it, but he was in some of the  
4 meetings.

5 Q. But you named him as someone who knew to the City of  
6 London Police?

7 A. I did, yes.

8 Q. Chris Carlin, did you name him as somebody that knew  
9 about undisclosed revenues to the City of London Police?

10 A. He was part of the statement, yes.

11 Q. Are you certain he knew at the time you wrote the  
12 statement?

13 A. Certain. I think he was involved in rebating, so I'm  
14 assuming that, you know --

15 Q. Thomas Bryant?

16 A. He was the trader and he was --

17 Q. Did he know of undisclosed revenue?

18 A. I think you're going to have to ask Thomas Bryant. It  
19 was my thinking, if you're on the KIA e-mail trail, that  
20 you're aware, but I can't say that for 100 percent certain.

21 Q. Did you have any -- when you named Mr. Bryant, in a  
22 statement to the City of London Police, you told the City of  
23 London Police Mr. Bryant knew of undisclosed revenues,  
24 correct?

25 A. From my conversation with -- well, not my conversation.

1 From the way we were trading in the US, on these particular  
2 deals, I have inferred that he would have known.

3 Q. Rod Ringrow, you named him?

4 A. He did know about the KIA, yes.

5 Q. Evan Bernstein. Did he know of undisclosed revenues that  
6 were being made by the State Street Global Markets?

7 A. He was trying to railroad the KIA deal, so I'm assuming  
8 he knew.

9 Q. David Puth, did he know?

10 A. Ross told me that he had a conversation with him.

11 Q. So you named a series of 10 or 11 people here who you say  
12 knew that there was undisclosed revenues, correct?

13 A. Yes. But --

14 Q. Some you're sure of, some you are unsure of, correct?

15 A. Undisclosed revenue is different from lying to clients.

16 Q. Your statement is, "I understood the following were aware  
17 of the charging structure employed in relation to some, if  
18 not all, of these deals," correct? That's your language.

19 A. That's correct. Yes.

20 Q. Let's go to paragraph 20. Did you tell the City of  
21 London Police the following:

22 "Further, and without limitation, I believe that  
23 the following people from compliance and legal in both Boston  
24 and London were also aware of the position, not least the KIA  
25 deal and its structure."

1                   And that you then list a series of lawyers and  
2                   compliance people to the City of London Police?

3                   **A.** That's part of the statement, yes.

4                   **Q.** Justine McCormack. Did you ever have conversation with  
5                   Attorney McCormack?

6                   **A.** I can make this a shorter answer. These people were on  
7                   the e-mail trail for the KIA, so that's why we put that in  
8                   there. But I don't know what they read, what they haven't  
9                   read, you know. So they may or may not know, but I can't say  
10                  that for certain.

11                  **Q.** But this representation was that they were aware; is that  
12                  correct?

13                  **A.** Okay. I also said already that I wasn't 100 percent  
14                  truthful there.

15                  MR. FRANK: Objection, Your Honor. He read part of  
16                  the statement, but not all of it.

17                  THE COURT: He read all of it before. Overruled.

18                  BY MR. WEINBERG:

19                  **Q.** Paragraph 22. Do you recall writing to the City of  
20                  London Police, "My recollection is that the position was also  
21                  discussed at a TMA update meeting organized by legal and  
22                  attended by State Street's external counsel, Herbert Smith,  
23                  in April 2011"?

24                  **A.** I'm just reading it.

25                  **Q.** Sure.



1     **A.**   Okay.  It's part of my statement, but again, I said the  
2     statement wasn't truthful and I believe I -- yesterday, I  
3     referred to or further explained my meeting in April of 2011  
4     and what happened there.

5     **Q.**   And there were five or six lawyers at that meeting,  
6     correct?

7     **A.**   That's about right, yeah.

8     **Q.**   And not one of them told you, Mr. Pennings, that we  
9     needed to eliminate from our template the provision that says  
10    that State Street is under no obligation, no duty to disclose  
11    revenues made by our broker-dealer affiliate, correct?

12    **A.**   Um --

13    **Q.**   Yes or no?

14    **A.**   It is correct, but I also did not know that we were lying  
15    to clients.

16    **Q.**   I understand, Mr. Pennings.  So let me focus you on this  
17    question.

18    **A.**   Correct.

19    **Q.**   Did any of those lawyers challenge you, in any respect,  
20    on April 2011, regarding what you told them was your need to  
21    keep in the contract the no duty to disclose provision?

22    **A.**   They did not object, no.

23    **Q.**   Okay.  And the no duty to disclose provision of a  
24    contract is irrelevant when the bank discloses its revenues,  
25    correct?

1 MR. FRANK: Objection to what's relevant under  
2 contract, Your Honor. If he wants to ask him his  
3 understanding.

4 THE COURT: I guess relevant to what?

5 MR. WEINBERG: It's not relevant to a --

6 BY MR. WEINBERG:

7 Q. Am I correct --

8 MR. WEINBERG: I'll ask it through the next  
9 question, Judge, rather than --

10 BY MR. WEINBERG:

11 Q. There's a no duty to disclose provision that's in both  
12 the Royal Mail contract and the template, correct?

13 A. There is one, yes.

14 Q. And that authorizes the bank not to be required to  
15 disclose revenues made by an affiliate, correct?

16 A. Well, I'm not a lawyer or anywhere legally qualified, but  
17 it's my belief that, just as a standalone contract, that you  
18 don't need to disclose any of the clauses in there, I  
19 suppose, as long as there's no other statement made to the  
20 contrary.

21 Q. Of course, if the revenues were all disclosed, the bank  
22 wouldn't need a no duty to disclose clause in its contracts,  
23 correct?

24 A. Again, I'm not a lawyer, but it makes sense.

25 Q. Okay. Let me go to the employment tribunal. Like the

1 City of London Police, you work with lawyers to present to  
2 the employment tribunal a lengthy written statement on your  
3 behalf, correct?

4 **A.** Correct.

5 **Q.** And like the statements to the City of London Police,  
6 although they typed it and they wrote it, you read it and  
7 adopted and approved it, and knew it was going to be  
8 presented to a tribunal, correct?

9 **A.** I did, yes.

10 **Q.** And you knew that that tribunal was like a judge, like a  
11 court. It was going to decide on issues that were important  
12 to you?

13 **A.** It was an employment tribunal, yes.

14 **Q.** And your goal in presenting this 98-page, written  
15 statement was to persuade the tribunal of the truth of those  
16 statements, correct?

17 **A.** It was to persuade them to side with me to get my job  
18 back and the money that was taken.

19 **Q.** And your testimony was, if I recall it correctly at the  
20 end of direct, that you were untruthful in significant parts  
21 of that 98-page statement, correct?

22 **A.** I made untruthful statements, yes.

23 **Q.** And you made them purposefully for the -- with the  
24 intention of persuading the employment tribunal to take your  
25 side, rather than State Street's?

1     **A.** Yes, I lied.

2     **Q.** And you not only lied in writing, you also went to the  
3     employment tribunal, raised your right hand, took an oath to  
4     tell the truth, lied?

5     **A.** It's the same thing. The submission was also -- I don't  
6     know how you called it, but I lied. I'm not proud of it.  
7     It's -- it's something that I did and I have to live with.

8     **Q.** It's something you did to try to increase the chances of  
9     you preserving your job, correct?

10    **A.** Yes.

11    **Q.** It's something you did because it was your, Ed Pennings',  
12    self-interest to do it, correct?

13    **A.** Yes.

14    **Q.** And when you signed this statement, you told the  
15    employment tribunal that you were being treated like a  
16    scapegoat. Do you recall that?

17    **A.** I recall that, yes.

18    **Q.** And there was a witch hunt to get you.

19    **A.** Well, I felt like I was singled out and treated  
20    differently from others who did the same, yes.

21    **Q.** And you said repeatedly in that 98 pages that you broke  
22    no contract and, therefore, you broke no regulation, and that  
23    your job should be preserved, correct?

24    **A.** I don't know if I said that repeatedly, but again, I  
25    wasn't truthful and I misled clients.

1     **Q.** Let's look at some of the things that you wrote with the  
2     intention of having your writings believed. Okay?

3     **A.** I'm sorry, what believed?

4             THE COURT: That's not really a question,  
5     Mr. Weinberg.

6             THE WITNESS: I didn't hear what you were saying.

7             THE COURT: There's no question pending,  
8     Mr. Pennings. You don't have to -- he's turning to something  
9     else and then he'll ask you a question.

10            MR. WEINBERG: Go to paragraph 316, if you can  
11     navigate through that. Got it?

12     BY MR. WEINBERG:

13     **Q.** Well, let me ask you this, Mr. Pennings, and I can bring  
14     you the hard copy. It's lots of pages.

15            Did you tell the employment tribunal that, quote,  
16     "Steve Smit was aware of the deliberate taking of undisclosed  
17     spreads"?

18     **A.** That was an earlier statement from the police, so I don't  
19     know if it is, yes. It's -- I'm assuming this is part of the  
20     same statement.

21     **Q.** It is. This, I would represent to you, is part of the  
22     statement submitted on your behalf to the employment  
23     tribunal?

24     **A.** Okay.

25     **Q.** And in it, you say, "Steve Smit was aware of the

1 deliberate taking of undisclosed spreads, was aware that this  
2 model had been used previously in relation to KIA and was  
3 aware that the true position was hidden from the client when  
4 they raised inquiries."

5 Do you recall writing that?

6 **A.** I don't recall writing it, but it's there, so it's part  
7 of it, yes.

8 **Q.** And you wanted it to be believed, did you not?

9 **A.** Yes.

10 **Q.** Because it was helpful to you if the head of London  
11 office of State Street Global Markets like you was aware of  
12 the practice by State Street to charge hidden or nondisclosed  
13 revenues, correct?

14 **A.** Yes. But this is purely, I believe, relating to the KIA.

15 **Q.** And today you say you're not sure what Mr. Submit knew  
16 and didn't --

17 **A.** It is my belief that he had information that he could  
18 draw conclusions from, but I'm not sure what he -- what kind  
19 of conclusions he draw -- drew, or if any.

20 **Q.** But it's fair to say that back in 2012, when you were  
21 writing lengthy statements or signing lengthy statements,  
22 that were written for you, you simply stated to them, with no  
23 limits or conditions, that he was aware of the deliberate  
24 taking of undisclosed spreads?

25 **MR. FRANK:** Asked and answered.

1 THE COURT: Overruled.

2 THE WITNESS: I believe I already said that I was  
3 not truthful. Steve Smit fired me, took several million  
4 dollars away from me, and I was angry with him. And I was  
5 probably a little liberal with the truth here. No, I was  
6 liberal with the truth.

7 Q. So part of the reason that you were comfortable accusing  
8 Mr. Smit is that you were angry with him?

9 A. I didn't say I was comfortable.

10 Q. Part of the reason you accused Mr. Smit of something  
11 you're currently unsure of was that you were angry with him?

12 A. I was angry with him, but I was trying to save my job and  
13 have the tribunal overrule that dismissal.

14 Q. Did you ask Mr. McLellan to come to London, testify on  
15 your behalf at the employment tribunal, and were angry at him  
16 for not complying with your wishes?

17 A. I wasn't angry at Mr. McLellan. I don't recall him  
18 coming over, but I may have. I may have, but I wasn't angry  
19 with Mr. McLellan.

20 Q. Let's switch to another subject, Mark Leaden. Do you  
21 recall Mark Leaden?

22 A. Yes.

23 Q. Do you recall that he was a compliance officer for State  
24 Street in the August 2011 period?

25 A. Yes.

1     **Q.** Do you recall a conversation with him on August 23rd of  
2     that year?

3     **A.** Not in great detail, but I know I had a conversation with  
4     him, yes.

5     **Q.** Do you recall telling him that the reason that Royal Mail  
6     was charged a markup was an error?

7     **A.** Yes, he was, you know, under the understanding that it  
8     was an error.

9     **Q.** You told him it was an error, but you later told the  
10    employment tribunal that you told Mr. Leaden that it was  
11    intentional and part of our contract, correct?

12   **A.** Again, I wasn't truthful. The story was spun to defend  
13    myself. It's for a fact that Mark Leaden was under the  
14    impression that it was an error, yes.

15   **Q.** And you gave him that impression in your conversation  
16    with him and then you lied about it later, correct?

17   **A.** I lied, yes.

18   **Q.** And you said he was wrong when you deliberately asked  
19    about your conversation with Mr. Leaden at your disciplinary  
20    hearing. You said I'm right, I told him it was an error.  
21    He's wrong.

22   **A.** I don't think --

23   **Q.** Let me turn that around. You told the disciplinary  
24    hearing officer that Mr. Leaden, when he said you said it was  
25    an error, was wrong. You claimed that you told them the



1 truth that it was an intentional markup, correct?

2 **A.** I don't know the exact details of any conversation to  
3 whoever you're referring to.

4 **Q.** You lied about Mr. Leaden, correct?

5 **A.** I spun that. I lied about the conversation, yes, to make  
6 it work for us.

7 **Q.** And did it concern you that it would put his job in  
8 jeopardy as a compliance officer, if your lies were believed,  
9 and his recollection was not believed?

10 **A.** I'm not proud of what I did.

11 **Q.** But in order to advance your self-interest, you were  
12 prepared to lie about Mr. Leaden, a compliance officer, even  
13 if it risked his position at State Street?

14 **A.** I never thought of it that way. He was very jovial about  
15 the whole thing. So I never thought of putting his job at  
16 risk.

17 **Q.** Did you think of putting Mr. Smit's position at risk, if  
18 your lies about him were believed?

19 **A.** No.

20 **Q.** Did you think about whether State Street would fire a  
21 compliance officer if they believed your statement that you  
22 told them that the markup was intentional and then he did  
23 nothing about it?

24 **A.** I think I just answered it. I didn't think of it.

25 **Q.** I want to go to a few other parts of your employment

1 tribunal statement.

2 Do you recall, Mr. Smit saying to the employment  
3 tribunal that -- excuse me, Mr. Pennings, that "I did not  
4 believe that State Street had acted in breach of any  
5 regulations. Given that we did not breach any contractual  
6 obligations, we never even considered having potentially  
7 breached any regulations."

8 Do you recall saying that?

9 **A.** I don't recall, but it's there. You know, this was our  
10 contract defense and the reality is I didn't think much more  
11 about regulations at the time. I knew it was wrong.

12 **Q.** You certainly weren't thinking about the criminal law at  
13 the time of your employment tribunal, were you?

14 **A.** Absolutely not.

15 **Q.** You were absolutely, at all times, in 2010, 2011, 2012,  
16 not believing that you were jeopardizing your freedom by  
17 doing anything that would be prohibited by the criminal law;  
18 is that right?

19 **A.** I never thought of that, never crossed my mind.

20 **Q.** Never discussed with Ross, never discussed with Rick  
21 Boomgaardt, correct?

22 **A.** No, I didn't know. That is correct. Yes.

23 **Q.** What was discussed is contracts and whether or not  
24 markups could be taken on buys. That was one of the subjects  
25 that you were discussing, correct?

1     **A.** I never, in my wildest dream, dreamed that I could be  
2 indicted by US court.

3     **Q.** Or indicted by any Court; is that correct?

4     **A.** Or by any court.

5     **Q.** Let me go to -- this is paragraph 6. We can blow that  
6 up.

7             Do you recall saying the following and I'll read it  
8 along with you.

9             "In addition, how could State Street assess the  
10 extent to which Royal Mail had a legitimate grievance,  
11 without assessing whether the client had signed up to a  
12 contract, where they were, in fact, not entitled to full  
13 transparency?"

14            Those are the words of your statement, correct?

15     **A.** Uh-huh.

16     **Q.** "After all, the client has a degree of choice as to the  
17 structure and price of a deal that they choose. On one view,  
18 the contract agreed with the client meant that State Street  
19 were entitled to say to the client the management fees were X  
20 and that disclosure of any remuneration made by affiliates  
21 was not covered or required by the contract with Royal Mail."

22            Correct?

23     **A.** That's what it says.

24     **Q.** And then you said "I do feel that would have been  
25 attractive approach and did not do so, but that was a

1 response that was arguably permissible under the deal and  
2 contract that they agreed to with State Street."

3 **A.** Uh-huh.

4 **Q.** And this is a paragraph of a statement to the employment  
5 tribunal, addressing whether State Street could take the  
6 position the contract allowed the markups or alternatively,  
7 the position that we should be diplomatic, we should give  
8 back the markups to Royal Mail, and try to preserve a  
9 positive relationship with them?

10 **A.** I'm not entirely sure if this interpretation of the  
11 contract is correct. You may have seen that the reason for  
12 my dismissal at State Street was for my response to the Royal  
13 Mail until -- following the query. And I think I am  
14 referring here to how I would have -- how I could have  
15 responded in that situation and I'm also saying that it's  
16 arguably permissible under the deal.

17 **Q.** State street on a couple of occasions, putting Royal Mail  
18 aside, when there's issues with clients, have just rebated  
19 money to clients, correct?

20 **A.** They were quite quick to rebate clients to put the issue  
21 to bed.

22 **Q.** And in fact, you would tell people it's better to rebate  
23 the money, or give the money back quickly, rather than have  
24 an extended conversation, because then we could have a good  
25 relationship with the client and we can go back and make

1 other -- other deals with them, where we make the money back,  
2 correct?

3 **A.** I remember discussing that with Ross, yes.

4 **Q.** Sainsbury's was one of them. There was an issue with  
5 Sainsbury's? You told them pay Sainsbury's back what you say  
6 they owe, we'll have future deals with Sainsbury's.

7 **A.** Not that I recall.

8 **Q.** Other clients you do recall, correct?

9 **A.** Not off the top of my head, but could be. I just don't  
10 know.

11 **Q.** But you do recall the bank was quick to try to give money  
12 back and try to resolve client issues under the banner that  
13 the client is always right?

14 MR. FRANK: Objection at sidebar, Your Honor.

15 THE COURT: All right.

16 (The following discussion held at the bench.)

17 MR. FRANK: Mr. Weinberg has extracted from me a  
18 representation that I would not get into reimbursements to  
19 clients. We've discussed at length at previous sidebars and  
20 at previous conferences that we would not get into the bank's  
21 reaction in September and he's now trying to elicit those  
22 very rebates to the clients and trying to go into matters  
23 that he previously represented that he'd not go into.

24 MR. WEINBERG: Nothing could be farther from the  
25 truth. I was addressing his knowledge. He was out of the

1 bank before the bank rebated any monies to the clients at  
2 issue here.

3 THE COURT: So what are you asking him?

4 MR. WEINBERG: I was asking about his understanding  
5 at the time of the August -- June, really, June 2011, when  
6 they gave back the million dollars, that that's not  
7 inconsistent with what he understood to be the bank's  
8 practices beforehand.

9 MR. FRANK: That was not the question. The  
10 question was about giving money back to Sainsbury's and the  
11 other defrauded clients.

12 MR. WEINBERG: No, the Sainsbury's return of money  
13 was at the conversation with him in 2010, or early 2011. I  
14 could show Mr. Frank the e-mail I was referring to. It has  
15 nothing to do with giving the money back after. He wouldn't  
16 know of it firsthand, because he wasn't there any longer.

17 MR. FRANK: Well, if he has nothing to do with it  
18 then I'm not sure why it's relevant. Sainsbury's did not  
19 know at the time that it had been defrauded.

20 MR. WEINBERG: This is not the same situation,  
21 Steve. This is another issue, which I can present it to the  
22 Court at a recess, if we can dig it out of the archives.  
23 There was another 2010 issue with Sainsbury's, and Pennings  
24 said give them the money back, or resolved the problem.

25 THE COURT: Then you need to clarify that, because

1 if you're saying --

2 MR. WEINBERG: No.

3 THE COURT: From the question, it just seemed like  
4 the only Sainsbury's deal we've heard about is the  
5 Sainsbury's deal that Mr. Frank has presented.

6 MR. WEINBERG: Okay.

7 THE COURT: So that question you asked about  
8 Sainsbury's, it seemed like it was about --

9 MR. WEINBERG: It didn't even occur to me that  
10 Steve was going there.

11 THE COURT: So in terms of what you want to ask him  
12 about, is money given back to -- that sort of the money given  
13 back and other times prior to that that money was given back,  
14 when there were unrelated disputes between him and the  
15 client, and sort of keep the client happy policy.

16 Is that what you want to do?

17 MR. WEINBERG: I'll focus the timeline.

18 THE COURT: Do you object to that?

19 MR. FRANK: I don't object to that, but I think  
20 there's a risk of confusion. So I think the generic question  
21 of --

22 MR. WEINBERG: I'm happy to leave it alone, is --  
23 you don't want me to focus on it being a different  
24 Sainsbury's deal. Either way.

25 MR. FRANK: I think the Sainsbury's shouldn't be

1 relevant to this.

2 MR. WEINBERG: I'm glad to go to other clients.

3 THE COURT: Okay.

4 MR. FRANK: I think the question should be were  
5 there times when you gave money back to clients.

6 THE COURT: Yeah, why do we need the specifics?

7 MR. WEINBERG: We don't.

8 THE COURT: Okay.

9 (Bench conference concluded.)

10 THE COURT: Go ahead, Mr. Weinberg.

11 MR. WEINBERG: Thank you, Your Honor.

12 THE COURT: Wait one moment until Ms. Lopez is  
13 ready.

14 Go ahead.

15 BY MR. WEINBERG:

16 **Q.** So I'm directing your attention to the time period before  
17 June 21 and 22, when the rebate was made to Royal Mail?

18 **A.** 2010 and 2011.

19 **Q.** Thank you, 2011. Taking your experience from that date,  
20 backward, to what you knew at the time. You were aware that  
21 there were other circumstances where clients, right or wrong,  
22 you know, made a complaint, had issues, and State Street's  
23 practice was to try to resolve them peacefully,  
24 diplomatically, and keep the good will of the client,  
25 correct?



1     **A.** It's fair to say that State Street paid back money very  
2     quickly and liberally. But, you know, if it's a legitimate  
3     case, then it's not so difficult to do. In this case, we're  
4     covering it up.

5     **Q.** The question was State Street's practice?

6     **A.** You're right, yes.

7     **Q.** Thank you, Mr. Pennings.

8             Can we turn to paragraph 44.

9             If you would look at 44 through 47, Mr. Pennings.

10     I'll try to cut through all the words --

11     **A.** I've read the 40 -- well, whatever is up here.

12     **Q.** We'll get you the other paragraphs in a second. They're  
13     on the next page.

14     **A.** (Witness reviews document.)

15     **Q.** Mr. Pennings, focusing on paragraph 47.

16     **A.** Oh, I haven't gotten there yet. I'm at 46.

17     **Q.** Okay. We'll wait.

18     **A.** (Witness reviews document.)

19             Yes.

20     **Q.** Am I correct that you represented to the employment  
21     tribunal that in the bond market, it is common practice for  
22     brokers to price the bonds net, rather than charging an  
23     explicit commission?

24     **A.** Yes, built into the price.

25     **Q.** Pricing a security net essentially means that the markup

1 or commission is built into the price, correct?

2 **A.** That's correct.

3 **Q.** Did you also tell them that more and more transition  
4 managers now ask executing brokers to provide net prices?

5 **A.** That's correct.

6 **Q.** And that included executing brokers who were outside  
7 brokers, or hired by a transition manager from some other  
8 company, or inside brokers or broker-dealer affiliates of the  
9 transition manager, correct?

10 **A.** I think what I'm referring to here is when we use  
11 external brokers, where we don't have direct market access,  
12 or where State Street didn't have direct market access.

13 **Q.** Let's look at the second sentence of paragraph 46.

14 "More and more transition managers now ask  
15 executing brokers, irrespective of them being affiliated to  
16 the transition manager or not, to provide net prices."

17 **A.** That's what I just referred to, yes.

18 **Q.** You were referring to transition managers asking brokers  
19 to provide net prices to them as a growing regular course  
20 of --

21 **A.** That was our belief that was going on in Europe, yes.

22 **Q.** And paragraph 45, second sentence -- or the first  
23 sentence is, "The transition manager has choices whether to  
24 use external brokers or affiliate brokers."

25 Correct?

1       **A.**   Yes.

2       **Q.**   And in each case you write "The client pays the cost of  
3       the broker."

4               Correct?

5       **A.**   Yes, the client pays for trading, yes.

6       **Q.**   Brokers don't work for free?

7       **A.**   That's correct.

8       **Q.**   Not whether they're State Street's affiliate broker or  
9       whether it's some external broker hired by a transition  
10      manager, correct?

11      **A.**   Brokers make money, yes.

12      **Q.**   I want to go to a different subject, if I may, and that's  
13      the KIA -- two KIA transitions, correct?

14      **A.**   Subject to these proceedings, yes.

15      **Q.**   There was actually a prior KIA transition, was there not?

16      **A.**   There were many KIA transitions.

17      **Q.**   And do you recall, back in 2008, before Mr. McLellan  
18      managed you, saying to Das, "If it is a government bond  
19      portfolio, forego the commission, as it will already be  
20      implicit in the spread"?

21      **A.**   I don't recall. But if I've said that, then that's not  
22      inconsistent with what I've said before.

23      **Q.**   In other words, having a spread, charging a client a  
24      spread, it's not unique to the six transitions that Mr. Frank  
25      featured during his direct exam, is it? Yes or no?

1     **A.** I believe I said in the direct examination that there is  
2 no difference in fixed income, apart from whether you  
3 disclose it, the level of spread or commission, whatever you  
4 want to call it, in the periodic notice.

5     **Q.** So let me quickly go through some facts with KIA and make  
6 sure that we got them.

7             You knew, before you bid on KIA 115, that a bid  
8 above zero would result in State Street's not winning that  
9 particular transition, correct?

10    **A.** That was my belief, yes.

11    **Q.** You had been told that by Mr. Ringrow and maybe by  
12 Mr. Das directly that the lowest bid wins and you should be  
13 very low, correct?

14    **A.** Yes.

15    **Q.** And you understand very low to be zero?

16    **A.** In this case, it was mentioned that we needed to be zero,  
17 yes.

18    **Q.** Your job was to win the transition and essentially,  
19 although -- essentially, you made the bid that Mr. Das told  
20 you directly or indirectly was what you needed to do to win  
21 the transition.

22    **A.** It was widely believed -- well, widely believed -- it was  
23 believed by myself and some others that we needed to charge  
24 zero, yes.

25    **Q.** You sent him, days after winning the bid, that first

1 periodic notice.

2 **A.** Which bid?

3 **Q.** KIA 115.

4 **A.** Okay.

5 **Q.** Can we have Exhibit 11? It's really 11-1, Max, sorry.

6 THE COURT: This is already in evidence.

7 MR. WEINBERG: It is, Your Honor. The next page.

8 BY MR. WEINBERG:

9 **Q.** All right. And if you can zoom down to the notes. It  
10 says "commission fees zero." And this is what you're sending  
11 back to the KIA -- note two --

12 MR. WEINBERG: And this could be for the jury, as  
13 well, Your Honor.

14 THE COURT: It is.

15 MR. WEINBERG: Thank you.

16 THE COURT: It should be on your screen. Is it on  
17 your screen?

18 THE JUROR: Affirmative responses.

19 BY MR. WEINBERG:

20 **Q.** "All bonds will be priced net as per market convention."

21 Do you see that?

22 **A.** Yes.

23 **Q.** That's your language?

24 **A.** I think so.

25 **Q.** It's classic bond language?

1     **A.** It's normal practice, yes.

2     **Q.** And again, you're essentially telling Das that when State  
3     Street reports the client prices, he's going to have a net  
4     price to his bond purchases, correct?

5     **A.** That is fair to say, yes.

6     **Q.** Which is going to include the market price and include  
7     the markup that goes to the broker-dealer?

8     **A.** It's one price, so they don't see this breakout.

9     **Q.** But that one price will consist of what the purchase  
10    price was from some counterparty and whatever the markup was,  
11    the spread?

12    **A.** That's correct.

13    **Q.** And if Das hired analytics or Hewitt or Towers Watson or  
14    any of the European consultants to come in and look at KIA  
15    115 afterwards, they would understand this language?

16               MR. FRANK: Objection to what they would  
17    understand.

18               THE COURT: Sustained as to the form.

19    BY MR. WEINBERG:

20    **Q.** Well, you understood that an outside consultant would  
21    understand the spread coms, the markup, the net pricing  
22    includes some money for the State Street affiliate  
23    broker-dealer?

24    **A.** If I were to pay a consultant to consult me on that, I  
25    would expect that consultant to know what it means.

1 Q. All right. And it wouldn't mean what you term to be --  
2 they could use ridiculous or some other -- nonsense, which is  
3 the idea that State Street would make \$2 million --  
4 \$2.6 million from the other side of these market deals?

5 MR. FRANK: Objection. That's not what he was  
6 referring to. It misstates the testimony.

7 MR. WEINBERG: It's not misstating the testimony.

8 THE COURT: We're not going to have an argument  
9 about what the testimony was.

10 Ladies and gentlemen, your memory of the testimony,  
11 your collective memory, is what controls.

12 So what's the question?

13 BY MR. WEINBERG:

14 Q. The question is that any market professional, anybody  
15 that you would hire to do an audit of a transition, would  
16 understand that it is nonsense, your words, to believe that  
17 State Street was making its spread from the other party, the  
18 other side, correct?

19 MR. FRANK: Objection to what market professionals  
20 would understand.

21 MR. WEINBERG: It's what Mr. Pennings would  
22 understand the market professionals --

23 THE COURT: As rephrased, overruled.

24 THE WITNESS: I gave that explanation in an e-mail  
25 to explain away how we would do zero and I did not, or we did

1 not want the market to know that we were bidding zero,  
2 because it went against our marketing pitch and our whole  
3 business model. I thought it was nonsense. I don't know  
4 what other people think. I just don't know.

5 BY MR. WEINBERG:

6 **Q.** But in this case, in fact, the spread came from where it  
7 usually comes from, the markup?

8 **A.** Like I said, in my direct testimony, I believe it would  
9 practically be impossible to do what -- because we don't know  
10 who's the counterparty.

11 **Q.** And to finish this note that is being communicated, you  
12 know, by you to Das, "All bonds will be priced net as per  
13 market convention with all markups included in the spread and  
14 no additional explicit commission fee charged."

15 And that was put there to represent what State  
16 Street -- what your intention was in terms of the making of  
17 monies for State Street, correct?

18 **A.** In part. It's also, you know --

19 **Q.** To protect yourself?

20 **A.** Just to protect ourselves. They wanted to see zero, here  
21 you go, we got zero. If they ever come and ask us  
22 afterwards, we can just use that as a cover.

23 **Q.** And the bank could not charge zero and make any money on  
24 this transition without a markup. It was biased, correct?

25 **A.** They couldn't charge zero and make money, no.



1 Q. Banks are in the business to make money, correct?

2 A. That's my belief.

3 Q. And KIA was one of the wealthiest sovereign wealth funds  
4 in the world, correct?

5 A. I don't see the relevance of that, but you're correct.

6 Q. And Das understood State Street was going to make money,  
7 didn't he?

8 MR. FRANK: Objection to what Das understood.

9 BY MR. WEINBERG:

10 Q. You understand that Das understood that he was -- that  
11 you were going to make money?

12 A. It was my belief that Das knew that we were making money.

13 Q. After the transition, Das never demanded of you, in June,  
14 July, August, September, October of 2010, Mr. Pennings, how  
15 much money did State Street make from that \$2 billion  
16 transition?

17 A. No.

18 Q. And neither did anyone else at KIA during that window  
19 between that transition 115 and the next one, correct?

20 A. No. That is correct, sorry. They didn't ask.

21 Q. They awarded you all of transition 121, correct?

22 A. Yes.

23 Q. So let's focus, if we may, on KIA 121. Here the proposal  
24 to win the KIA transition was zero commissions and we, State  
25 Street, will cover some of your charges, your expenses,

1 correct?

2 **A.** Yes.

3 **Q.** So that if there was no additional source of revenue,  
4 State Street would lose money doing a \$4 billion transition  
5 for this massive wealth fund from Kuwait, correct?

6 **A.** Correct.

7 **Q.** You understood, did you not, that any industry expert,  
8 any consultant, anybody looking at KIA 121, and looking at  
9 the offer of zero -- and we'll cover the costs -- would know  
10 that State Street was going to charge a markup on the bonds  
11 to make some money, correct?

12 **A.** I don't -- I don't know common to other people, but --

13 **Q.** It's only obvious.

14 **A.** It's obvious, yes.

15 **Q.** And, in fact, that was the plan, correct?

16 **A.** That we were going to make money, yes.

17 **Q.** And when you won the transition proposal in late October  
18 or mid October, you forwarded that success, the -- Das'  
19 saying "you win," to Mr. Smit, the head of the UK office, did  
20 you not?

21 **A.** Whether it was May or Ringrow, I can't remember, but  
22 that's what I referred to earlier, as well, yes.

23 **Q.** And do you recall Mr. Smit saying the words, "fantastic  
24 win"?

25 **A.** I believe something along those lines. He was very

1 happy.

2 **Q.** Happy to see that you succeeded in persuading KIA to give  
3 you a \$4 billion bond transition for no fees and cover their  
4 costs, correct?

5 MR. FRANK: Objection as to why Mr. Smit was happy.

6 THE COURT: Sustained as to why -- you asked --

7 BY MR. WEINBERG:

8 **Q.** And did you understand that Mr. Smit was happy and that  
9 others were happy, because they expected that monies would be  
10 made from this transition?

11 **A.** It was my belief that he was extremely happy and that he  
12 knew that we were going to make a lot of money out of this  
13 very large trade.

14 **Q.** Mr. Puth, back in Boston, head of State Street Global  
15 Markets and the man who was -- supervised or was above Mr.  
16 McLellan in the hierarchy, you also learned that he was  
17 interested in KIA 121, did you not?

18 **A.** I believe, from Ross, that he was and he was normally  
19 interested when there was something very large going on, yes.

20 **Q.** Because they were what's called pipelines; is that  
21 correct?

22 **A.** Well --

23 **Q.** Revenue forecasts went up the line?

24 **A.** That's called a pipeline, yes. So what's expected to  
25 come in over the next whenever.

1     **Q.** Right. In other words, Mr. Puth, Mr. Smit would ask you  
2     and your team to send them what are the deals that are coming  
3     up in the next month or quarter and how much money do you  
4     expect to make from them, correct?

5     **A.** I wouldn't send it directly to him, but that would go  
6     through Ross, and I'm assuming that he would pass it on, yes.

7     **Q.** And after the deals were concluded, there would also be  
8     ways for the others in the bank that weren't in London to  
9     know how much money was generated by the transition addition,  
10    correct?

11    **A.** Before or afterwards?

12    **Q.** Afterwards.

13    **A.** I think everyone who received revenue numbers was aware  
14    that we made a lot of monies, yes.

15    **Q.** In other words, dollar for dollar, every dollar that was  
16    made by your group in London on the transitions that are the  
17    subject of this case went to the State Street bank, correct?

18    **A.** Yes, it didn't go into my pocket, no.

19    **Q.** It went right to the bank, correct?

20    **A.** Well, yes.

21    **Q.** And there was profit and loss statements and daily  
22    revenue reports and people who wanted to know would know how  
23    much money was made on different transitions, correct?

24               MR. FRANK: Objection to what others would know.

25               THE COURT: Sustained as to that.

1 BY MR. WEINBERG:

2 Q. You understood that others would know how much money was  
3 generated by the transitions at issue here?

4 A. In this particular case, this was such a large  
5 transition, it was my belief that, you know, people would  
6 have known it came from KIA, yes.

7 Q. And therefore, if people were aware that the -- that the  
8 deal with KIA was zero commissions and yet millions of  
9 dollars were coming from this deal, they would know that they  
10 came from the trading of bonds, correct?

11 MR. FRANK: Objection to what they would know.

12 THE COURT: Sustained.

13 BY MR. WEINBERG:

14 Q. You understood that they, as professional bankers, would  
15 understand that the difference between zero and millions came  
16 from the spread, the markups on the buying and selling of  
17 bonds for KIA, correct?

18 A. If people would have looked at the document and saw that  
19 it said zero.

20 Q. Yup.

21 A. And then the same day or two days or a day later, 4  
22 million or whatever it was comes in, I would expect them to  
23 know that it came from the same client and you know,  
24 either -- I don't know what they -- it's very difficult for  
25 me to say what other people think, but it seems to me pretty

1 obvious.

2 **Q.** Understood. Let's focus on this November 2, 3, 4 period  
3 in 2010, KIA 121.

4 You understood that Mr. McLellan was back in  
5 Boston; is that correct?

6 **A.** I knew he was in Boston, yes.

7 **Q.** You recall his wife gave birth to twins a day or two  
8 before the -- this transition?

9 **A.** Around the time. I know he had twins and I was very  
10 happy for him, yes.

11 **Q.** Do you recall that Mr. McLellan was asking you, during  
12 this time period, to send him the KIA contract and the KIA  
13 periodic notice?

14 **A.** Yes.

15 **Q.** Do you recall seeing evidence that Mr. McLellan then sent  
16 the periodic notice to a man named Brian Woodard?

17 **A.** He did, yes.

18 **Q.** To David Puth?

19 **A.** I don't know.

20 **Q.** To Krystyna Beck, the UK lawyer?

21 **A.** I think either Brian Woodard or myself sent it either to  
22 Krystyna or Simone Paul. I'm not sure, but if there's a  
23 documentation, then sure.

24 **Q.** You're aware that there were meetings on November 2,  
25 which were late in the day for you, the day before trading in

1 the United States, with a United States lawyer named Melissa  
2 McCay, correct?

3 **A.** I was aware there were meetings with lawyers and  
4 compliance, yes.

5 **Q.** Were you aware that Brian Woodard, who was Ms. McCay's  
6 global head of legal, was involved in these decisions and  
7 meetings, correct?

8 **A.** That was my understanding, yes.

9 **Q.** And you're aware that the next day in London, that at  
10 least Ms. Beck and Simone Paul, the UK lawyers, were involved  
11 in reviewing the contract, reviewing the periodic notice, and  
12 deciding whether the trade could proceed, correct?

13 **A.** I knew they were involved. I don't know what they looked  
14 at, but that's something that you would have to ask the  
15 lawyers. They were involved.

16 **Q.** Let's look at a few e-mails and maybe that will refresh  
17 your memory.

18 **A.** I know they received the e-mails.

19 **Q.** They received the documents?

20 **A.** They received the documents, but all I'm trying to  
21 explain is I don't know exactly what they looked at.

22 **Q.** Fair enough. They received from -- whether directly from  
23 Mr. McLellan or from Mr. McLellan to Mr. Woodard --

24 **A.** They received the documents.

25 **Q.** And the documents meant both the contract and the

1 periodic notice that governed this KIA 121, correct?

2 **A.** Correct.

3 **Q.** And they gave their blessing to KIA 121's proceeding  
4 sometime in November 3, correct?

5 **A.** Yes.

6 **Q.** So I want to turn your attention, in particular, to a  
7 couple of these e-mails. One was admitted yesterday. It's  
8 Government Exhibit 53. Perhaps we can access that. And I  
9 want to see if we can expand the Bryant e-mail to you, Chris  
10 Carlin, and Ross McLellan?

11 MR. WEINBERG: Can we get that any bigger, Max?  
12 Perfect, thanks.

13 BY MR. WEINBERG:

14 **Q.** Mr. Bryant was the head of US trading and he was saying  
15 to Ross, you, and Chris Carlin, "heads up, Evan just left my  
16 office. He got Puth hot and bothered on this trade, and they  
17 have Woodard saying he thinks it's fine that we trade  
18 internally, because it is a non-ERISA client."

19 Do you see that sentence?

20 **A.** Yes.

21 **Q.** And just so we can identify people, Evan was Mr.  
22 Bernstein, who was the head of rates, correct?

23 **A.** Yes.

24 **Q.** Puth is David Puth, the head of State Street Global  
25 Markets?



1       **A.**    Yes.

2       **Q.**    And Woodard is Brian Woodard, the global head of legal,  
3       correct?

4       **A.**    Yes.

5               MR. FRANK:  I'm not sure this is in evidence.

6               THE WITNESS:  Or Brian --

7               THE COURT:  Hold on one second.

8               MR. FRANK:  I'm not sure this is in evidence.  We  
9       don't have an objection to it being in evidence, but just as  
10      a technical matter --

11              THE COURT:  All right.  If it's not in evidence  
12      then --

13              MR. WEINBERG:  I thought it was, I'm sorry.

14              THE COURT:  Then I'll admit it since there's no  
15      objection to it.

16              THE DEPUTY CLERK:  What number is it?

17              THE COURT:  53.  Why don't you check to see.  If it  
18      wasn't already admitted, we'll admit it now.

19              MR. WEINBERG:  I move for its admission.

20              (Exhibit No. 53 admitted into evidence.)

21              THE DEPUTY CLERK:  It has not been admitted.

22              THE COURT:  It has not been?

23              THE DEPUTY CLERK:  Has not been.

24              THE COURT:  All right.  It has not been admitted.

25              MR. WEINBERG:  I apologize.  It's now admitted?

1 THE COURT: Admitted.

2 (Exhibit No. 53 admitted into evidence.)

3 BY MR. WEINBERG:

4 Q. Mr. Bryant is saying that Mr. Woodard is saying, he being  
5 the lawyer, the global head of legal, he thinks it's fine  
6 that we trade internally, because it is a non-ERISA client.

7 Did you understand that ERISA was a law in the  
8 United States?

9 A. I'm not a hundred percent familiar with it, but I was  
10 broadly aware of what ERISA -- I believe it had some extra  
11 responsibilities that come with it.

12 Q. And there's no ERISA in Europe, correct?

13 A. No.

14 Q. So what you understood, without knowing its details,  
15 added a level of disclosure obligations to the bank in the  
16 United States?

17 A. That was my belief, yes.

18 Q. I want to -- next sentence is: "Evan," meaning Bernstein,  
19 "had legal all set up on a call, so we called Brian," meaning  
20 Woodard, "Melissa," who is the US lawyer, Melissa McCay, "and  
21 Justin," who is another lawyer, Justin McCormack, "from my  
22 office;" is that correct?

23 A. I don't know Justin or Melissa, but I understood they  
24 were legal, yes.

25 Q. "Woodard and Melissa," the two lawyers, "had no problem

1 stating they were fine with the transition manager using  
2 Evan's group as the counterparty, but it was TM, transition  
3 management, you, Ross, Chris, and Ed, that were against it.  
4 I'm sure that's how they put it to Puth, as well."

5 You recall there was some discussions on November 2  
6 about whether or not the bond business that Evan Bernsten  
7 headed, that David Puth had set up, could be in competition  
8 with other outside banks to buy the KIA bonds, correct?

9 **A.** Yes, there was a discussion about that, yes.

10 **Q.** And that was, in part, why all these lawyers were focused  
11 on this transition back in the United States, correct?

12 **A.** That's my understanding, yes.

13 **Q.** Melissa is going to have the head of legal in the UK look  
14 at the contract and unless there is expressed prohibition in  
15 the language in using an affiliate, they feel it's okay if  
16 the transition manager notifies KIA in advance in the notice  
17 to the client that we may use an affiliate as a counterparty  
18 when we start trading.

19 I changed a few words to make it easier to  
20 understand, but that's the thrust of it, correct?

21 **A.** Correct.

22 **Q.** "Ed, you are going to have to work with legal in the UK  
23 tomorrow on the wording of the contract."

24 Correct?

25 **A.** Correct.

1       **Q.** "Or work on why KIA will boot us if we change how we sold  
2       the trade to them when we want it. I am not sure if  
3       compliance is 100 percent okay with this, so Chris and I will  
4       discuss that with them in the US morning."

5               Correct?

6       **A.** That's what it says, yes.

7       **Q.** And that's because the trading was supposed to the next  
8       day in the UK, which is four or five hours ahead?

9       **A.** Four or five hours ahead. And then Kuwait is --

10      **Q.** And this is all occurring late in your day November 2 in  
11      Boston, involving some pretty high level people?

12      **A.** Correct.

13      **Q.** Head of legal, Puth, compliance, a lot of people looking  
14      at this deal?

15      **A.** I agree.

16      **Q.** And essentially, you're being tasked by these people to  
17      work with UK legal to make sure that the contracts permit the  
18      trading, correct?

19      **A.** Being tasked, I don't think Tom Bryant would give me  
20      orders in the UK, but you can argue from this that that's  
21      what he's asking, yes.

22      **Q.** He's saying that if you want to go ahead and trade that  
23      the lawyers in the US are delegating to the lawyers in Great  
24      Britain the decision whether the trading will be okay.

25      **A.** I'm not sure if you can take -- draw that conclusion, but

1 it's -- it's fair to say, I suppose.

2 **Q.** Melissa did say earlier -- Melissa being Melissa McCay,  
3 the lawyer in the US?

4 **A.** That's my understanding from it.

5 **Q.** "She didn't see it as an issue that we both make money on  
6 this trade (FIRB)."

7 Does that relate to rates, the Evan Bernstein group?

8 **A.** Yes.

9 **Q.** And "TM" relating to Portfolio Solutions, your group?

10 **A.** Correct.

11 **Q.** "So if we are forced to do it, we should both be able to  
12 charge, us as the BD."

13 Does that mean broker-dealer?

14 **A.** That's my understanding.

15 **Q.** "And then as an MM, market maker, on behalf of STT,  
16 State Street."

17 **A.** Yes.

18 **Q.** So Mr. Bryant is saying to Ross that the US lawyer,  
19 Melissa McCay said during this phone call with Mr. Woodard  
20 and others that it's okay for State Street Transition  
21 Management to make money, correct?

22 **A.** Yes.

23 **Q.** Through it's broker-dealer, correct?

24 **A.** That's what I read from it, yes.

25 **Q.** They were reading the contracts in the periodic notices

1 and it said zero commissions?

2 MR. FRANK: Objection as to what they were reading.

3 THE COURT: Sustained as to that.

4 BY MR. WEINBERG:

5 Q. They had available to them, Mr. Woodard received from Mr.  
6 McLellan, the periodic notice?

7 MR. FRANK: Objection to what they had available to  
8 them, Your Honor. All that's been testified to was something  
9 was transmitted.

10 THE COURT: Overruled.

11 BY MR. WEINBERG:

12 Q. Was the periodic notice transmitted by you to Mr.  
13 McLellan and do you understand it was then transmitted to  
14 Mr. Woodard?

15 A. I remember that I sent the transition management  
16 agreement and the periodic notice to Mr. McLellan that  
17 evening. I don't know what time.

18 MR. WEINBERG: Could we have 740, please, Max.

19 THE COURT: Is that in evidence?

20 MR. WEINBERG: No.

21 And can you blow up the bottom e-mails.

22 BY MR. WEINBERG:

23 Q. Does this series of e-mails from about 7:22, on  
24 November 2 refresh your recollection that Mr. McLellan sent  
25 to Mr. Brian Woodard, the global head of legal, the periodic

1 notice?

2 **A.** Yes. I knew he sent it. I don't know the exact timing,  
3 because I always get confused with the US and then London  
4 times.

5 **Q.** And do you see that Mr. Woodard then sent it to --

6 MR. FRANK: Objection to reading -- objection to  
7 reading from the document.

8 BY MR. WEINBERG:

9 **Q.** Does this refresh your recollection as to what you knew  
10 on November 2, 2010, that Mr. Woodard, thereafter, with an  
11 e-mail CCed to you, sent the notice on to Krystyna, it's the  
12 UK lawyer, Krystyna Beck, saying, "Can you take a look at  
13 this in the morning and discuss with Ed? I'll send some  
14 thoughts later tonight."

15 **A.** Yes.

16 **Q.** Okay. Can we go to the top one. And then, again, the  
17 next at 12:06 a.m., Ross is, again, sending the periodic  
18 notice, this time signed. The first one wasn't, correct?

19 **A.** He sent a periodic notice. I don't know what -- I don't  
20 see the attachment, so --

21 **Q.** It says attachment "periodic notice signed," correct?  
22 Here is the --

23 **A.** That's what it says, yes.

24 **Q.** You have no reason to doubt that Mr. McLellan was sending  
25 the period notice signed to Mr. Woodard via this e-mail,

1 correct?

2 **A.** No, because I believe I sent it to Ross, so --

3 **Q.** You sent it to Ross and Ross sent it to the lawyers?

4 **A.** That's my understanding, yes.

5 **Q.** Thank you. So going back to Exhibit 53 admitted.

6 Whether Ms. McCay did or did not have the periodic notice at  
7 the time of this, Mr. Bryant was saying to you, in essence,  
8 don't worry if rates get approved or not, because even if  
9 they do and even if they can buy the bonds and even if they  
10 can make money, we, the transition management team, will also  
11 be able to make money on this transition, correct?

12 **A.** He relayed the message from Melissa. I don't think Tommy  
13 Bryant is a lawyer, but Melissa is.

14 **Q.** More importantly, he is telling you what the United  
15 States lawyer, Melissa McCay, who's working with Bryant  
16 Woodard is saying, you could charge a markup and make money  
17 on bonds as a broker-dealer?

18 **A.** He's saying we can both make money, so yes.

19 MR. WEINBERG: Can we have 766, please?

20 THE COURT: Is that in evidence?

21 MR. WEINBERG: No, Your Honor.

22 I'm reminded, Your Honor. I apologize. I didn't  
23 move for the admission of 740, which is the e-mails with the  
24 periodic notice that we just discussed. I would move for its  
25 admission.



1 MR. FRANK: No objection.

2 THE COURT: Admitted.

3 (Exhibit No. 740 admitted into evidence.)

4 BY MR. WEINBERG:

5 Q. Would you look at the -- the e-mail that's on your  
6 screen. And does this refresh your recollection about your  
7 saying to Chris Carlin, in the morning of November 3, the day  
8 after you got Mr. Bryant's e-mail about what Ms. McCay said,  
9 that "we can take a spread"?

10 A. Yes, that's what I said here. Yes. I don't recall the  
11 e-mail, but it refreshes my memory.

12 Q. In other words, rates could compete in the marketplace  
13 and if they get a best execution, they can buy a bond or sell  
14 a bond, but we, the broker-dealer, will take a spread on KIA  
15 121?

16 A. Yes, that is what I said. That is, the following day,  
17 right?

18 Q. Yes.

19 A. Yes.

20 MR. WEINBERG: 760, please -- I would actually move  
21 for the admission of that document, as well, Your Honor.

22 MR. FRANK: No objection, Your Honor.

23 THE COURT: Admitted.

24 MR. JOHNSTON: What's the number?

25 MR. WEINBERG: 756.

1 THE COURT: That was 756?

2 MR. WEINBERG: Yes, Your Honor.

3 (Exhibit No. 756 admitted into evidence.)

4 BY MR. WEINBERG:

5 Q. November 3 --

6 THE COURT: What Exhibit is this?

7 MR. WEINBERG: This is -- it's not admitted yet,  
8 but we'll be moving for its admission.

9 THE DEPUTY CLERK: What's the number?

10 MR. WEINBERG: 760, Your Honor.

11 BY MR. WEINBERG:

12 Q. Do you recall when you went to the office on November 3,  
13 there was a review by UK legal of whether or not this  
14 transition could proceed?

15 A. They were looking at it, yes.

16 Q. And do you recall that Simone Paul and Krystyna Beck were  
17 both part of the UK legal team that was -- at Brian Woodard's  
18 request, was looking at this transition and seeing whether or  
19 not to approve it?

20 A. Yes.

21 Q. And that Krystyna Beck had said to you --

22 MR. WEINBERG: This is Exhibit 58. Is that  
23 admitted?

24 THE DEPUTY CLERK: 58 is not.

25 BY MR. WEINBERG:

1     **Q.** I would show you first Exhibit 58 and then we'll go to  
2     Simone Paul.

3             MR. WEINBERG: And I would move for the admission  
4     of this Exhibit, Your Honor.

5             MR. FRANK: No objection.

6             THE COURT: 58 is admitted.

7             (Exhibit No. 58 admitted into evidence.)

8     BY MR. WEINBERG:

9     **Q.** And you recall that you were essentially telling all  
10    these lawyers in the middle of that page --

11            If we can have that a little -- that there was  
12    discussions and that you're okay to have rates quote prices,  
13    but only if there's best execution, correct?

14    **A.** Yes.

15    **Q.** And you were quoting a part of the KIA contract to the  
16    lawyers to support that conclusion, correct?

17    **A.** Yes.

18            MR. WEINBERG: And could we go up to the Krystyna  
19    Beck e-mail?

20    BY MR. WEINBERG:

21    **Q.** Ms. Beck is sending an e-mail to you, Brian Woodard,  
22    Ross, Chris Carlin, Simone Paul, Tom Bryant, and Anthony  
23    Skully, correct?

24    **A.** Yes.

25    **Q.** And she is saying, "From a legal perspective, per se,

1 there is no issue in dealing with the rates desk as a  
2 counterparty. It must be consistent with conflict of  
3 interests policy."

4 Correct? Meaning best execution.

5 **A.** That's what it says, yes.

6 **Q.** Okay. Now let's go to Simone Paul, who's another lawyer  
7 in the UK office.

8 THE COURT: This is a different exhibit, right?

9 MR. FRANK: Your Honor, I believe counsel may have  
10 misread from that document. I didn't catch it, but I believe  
11 the words "conflicts of interest" are not in the document.

12 THE COURT: I think the last --

13 THE WITNESS: Just best execution, it said, right?

14 THE COURT: I think the last line of the e-mail.

15 MR. FRANK: Okay.

16 BY MR. WEINBERG:

17 **Q.** So now I want to switch to Simone Paul.

18 THE COURT: Is this a different e-mail?

19 MR. WEINBERG: This is 760, Your Honor.

20 THE COURT: And I'm sorry, you admit 760 or not?

21 MR. WEINBERG: Not yet, but I will move for its  
22 admission.

23 THE DEPUTY CLERK: He just did.

24 THE COURT: All right.

25 BY MR. WEINBERG:

1       **Q.** And do you recall Ms. Paul was reading some of the  
2       contracts, had some issues --

3               THE COURT: Hold on, Mr. Weinberg.

4               THE DEPUTY CLERK: No, not yet.

5               THE COURT: 760 is not yet admitted. He is going  
6       to offer it.

7               Go ahead.

8       BY MR. WEINBERG:

9       **Q.** Do you recall that Ms. Paul was reviewing the contracts  
10      on the morning of the 3rd?

11      **A.** Yes, she was.

12      **Q.** And you and her had an e-mail exchange where you were  
13      telling her that the periodic notice referred to fixed  
14      income, correct?

15      **A.** Yes, because I believe she put in the subject  
16      line "derivatives trading," which was not relevant.

17      **Q.** You corrected her, she approved -- reviewed it again,  
18      approved the transition, and the transition occurred,  
19      correct?

20      **A.** She approved the fact that we could go ahead and do the  
21      transition.

22      **Q.** The transition generated several millions of dollars of  
23      revenues as a result of the taking of spreads, correct?

24      **A.** Correct.

25      **Q.** And they were taken by the affiliate of State Street,

1 pursuant to the agreement, correct?

2 **A.** To affiliates, yes.

3 **Q.** And you, thereafter, met David Puth, did you not?

4 **A.** I remember speaking to him. I don't know exactly when.

5 **Q.** Do you remember -- do you remember his congratulating  
6 you?

7 **A.** I believe he was quite pleased with the trade, yes.

8 **Q.** Do you remember sending an e-mail to Ross McLellan on  
9 November 5th telling Ross that you had your meeting with  
10 Puth?

11 **A.** Yes.

12 **Q.** And do you recall saying he, Puth, loves Eddie, meaning  
13 you?

14 **A.** Yeah, he congratulated me.

15 **Q.** Mr. Puth, in no way, objected to the KIA 121 transition?

16 **A.** No, he didn't.

17 **Q.** Congratulated you on making a lot of money for State  
18 Street?

19 **A.** Yes.

20 **Q.** Talked to you about FX and how the transitions were  
21 generating FX revenues that were important to the bank?

22 **A.** I believe he mentioned that, yes.

23 **Q.** Revenues that were not disclosed to the client, correct?

24 **A.** FX revenues not disclosed, no.

25 **Q.** And the overall result of the meeting is that Mr. Puth

1 was very happy with your leadership on KIA 121, correct?

2 **A.** He was happy. I don't know with what parts of my  
3 involvement. He was happy, but I didn't ask him. I was  
4 quite happy that he was happy.

5 **Q.** Happy enough to tell Ross, he, Puth, loves Eddie,  
6 correct?

7 **A.** Correct.

8 **Q.** Now, I want to go back to the employment tribunal.

9 MR. WEINBERG: If we can go back to paragraph 96.  
10 And can you blow up paragraph 96, Max? Thank you.

11 BY MR. WEINBERG:

12 **Q.** Do you recall your attorneys on your behalf, in a serious  
13 tribunal dealing with your employment, saying, "David Puth,  
14 Mark Hansen, Brian Woodard, Ross McLellan, and Simone Paul  
15 all knew that a zero commission was being quoted and yet the  
16 day after this large transition, State Street showed several  
17 million US dollars had been received in revenue via the  
18 client."

19 **A.** That's in the statement, yes.

20 **Q.** "The whole team, including myself, were all congratulated  
21 on this deal by senior management, including Steve Smit and  
22 David Puth."

23 **A.** I recall that, yes.

24 **Q.** "If State Street really would not allow or did not  
25 approve to take a markup through our trading affiliates, then

1 certainly David Puth, Brian Woodard, or Mark Hansen would  
2 have spotted this dramatic increase in revenues immediately  
3 as all of them had sight of State Street's daily revenue  
4 numbers."

5 That's your writing?

6 **A.** They had sight of the revenue numbers, yes.

7 **Q.** Mark Hansen is global head of compliance, correct?

8 **A.** He is, for SSGM.

9 **Q.** "If there had really been a problem with the model of the  
10 transaction, it would have been corrected in 2010."

11 That's what you wrote to the employment tribunal?

12 **A.** That's what I wrote, yes.

13 **Q.** I want to be clear here. The very most senior  
14 management, senior legal, and senior compliance were all well  
15 aware of the deal, how it worked, and none of them raised any  
16 queries.

17 **A.** I made assumptions that they would have spotted the zero.  
18 I can't say that for certain. But I made, for this purpose,  
19 that assumption, yes.

20 **Q.** You used that assumption and made an unconditional  
21 statement to the employment tribunal.

22 "David Puth, Mark Hansen, Brian Woodard, Ross  
23 McLellan, and Simone Paul all knew that a zero commission was  
24 being quoted and yet a day after this large transition, State  
25 Street showed several million US dollars had been received."



1     **A.** They were either on the e-mail trail, or as I understood  
2     it, been talked to by Ross. So I just assumed they knew  
3     which, you know, is probably a step too far, but that's what  
4     I wrote.

5     **Q.** Well, Simone Paul was the one that you were in direct  
6     one-to-one communication with, not Ross, correct?

7     **A.** Yes, Simone Paul came to my office in the morning of the  
8     3rd, I believe, and said you can go ahead with the trade. It  
9     says fixed income, so you're okay.

10    **Q.** Did she know it was zero commission?

11    **A.** I don't know.

12                 MR. FRANK: Objection to what she knew.

13                 BY MR. WEINBERG:

14    **Q.** Did you understand that she knew it was zero commission?

15    **A.** I simply don't know. I wanted her to understand it, but I  
16    just don't know.

17    **Q.** But you wrote to the employment tribunal, or allowed your  
18    lawyers to write a statement you signed, "Simone Paul, the UK  
19    lawyer, knew that zero commission was being quoted."

20                 Was that true or false?

21    **A.** I did say that and it was an assumption. She may have  
22    and she may not. I don't know.

23    **Q.** And again, you weren't considering her interest as a  
24    lawyer, or her position as a State Street lawyer when you  
25    unconditionally wrote to the employment tribunal Simone Paul

1 knew, correct?

2 MR. FRANK: Asked and answered numerous times.

3 THE COURT: Overruled.

4 THE WITNESS: I wasn't thinking of her position.

5 No, I didn't realize that that would have any impact at that  
6 point. Actually, Simone Paul had already left the bank,  
7 because she left in 2011, I believe.

8 BY MR. WEINBERG:

9 Q. You weren't thinking about what effect this had on her  
10 profession, were you?

11 A. I wasn't, no.

12 Q. Okay. That's all.

13 Now, Mr. Frank has focused you on six or seven  
14 transitions during his direct examination, correct?

15 A. He did, yes.

16 Q. Were these the only transitions where nondisclosed  
17 revenues were charged to clients?

18 A. I think there was another client where we had undisclosed  
19 revenues, but that client, in my view, was not misled.

20 Q. Do you remember a client named Henkel, H-e-n-k-e-l, from  
21 2009?

22 A. No, I don't.

23 Q. Let me see if I can refresh your recollection. This is  
24 January 2009. It was before Ross McLellan was head of global  
25 PSG; is that correct?

1       **A.**   Yes.   That's correct.

2               MR. WEINBERG:   Could we have 792.   Could you show  
3   Mr. Pennings the top e-mail.

4               And this is not in evidence, Your Honor.

5               THE COURT:   I understand.

6               MR. WEINBERG:   Henkel --

7               THE COURT:   You're just refreshing his  
8   recollection?

9               MR. WEINBERG:   Yes, Your Honor.

10              THE COURT:   Why don't you just have him read it.  
11              Did you read it?

12              THE WITNESS:   Yeah, I read the e-mail.   I don't --  
13   I don't recall it, but it's clearly from me.

14              MR. FRANK:   He can't see the entire document,  
15   they've excerpted one line.

16              MR. WEINBERG:   I'm glad for you to see the whole  
17   document.   Can you show the entire document?

18              BY MR. WEINBERG:

19       **Q.**   Who was Andreas Franz?

20       **A.**   Andreas Franz was someone who worked in Germany for State  
21   Street Custody.

22       **Q.**   What is he asking you to do in January of 2009?

23       **A.**   If I can just read that.

24       **Q.**   Sure.

25       **A.**   (Witness reviews document.)   Okay.   He's asking us to put

1 a pre-trade together for a 200 million euro portfolio.

2 **Q.** And what do you tell Mr. Boomgaardt?

3 **A.** "I would use eight basis point commissions and \$0.02 per  
4 share in the US."

5 Which is odd, because the subject line says "global  
6 credit," which would refer to a fixed income trade, and I'm  
7 quoting -- or I'm suggesting to him equity commissions.

8 MR. WEINBERG: Okay. 794. Can you show, first,  
9 Mr. Pennings, the bottom e-mail? Thanks, Max.

10 BY MR. WEINBERG:

11 **Q.** Do you see certain questions being asked by a  
12 representative of Henkel?

13 MR. FRANK: Objection, form.

14 BY MR. WEINBERG:

15 **Q.** Of Mr. Franz?

16 MR. FRANK: Objection to form.

17 THE COURT: Overruled.

18 It's just yes or no.

19 THE WITNESS: If I can --

20 MR. FRANK: Your Honor, he's being asked what the  
21 document says, rather than what he remembers.

22 MR. WEINBERG: Thank you, Mr. Frank.

23 THE COURT: Once you've read it. If you want to  
24 read the others, you can.

25 THE WITNESS: (Witness reviews the document.)

1 Okay.

2 BY MR. WEINBERG:

3 **Q.** One of the questions being asked by the client, through  
4 Mr. Franz, was what is the fee that State Street is charging,  
5 correct?

6 **A.** Yes. So it looks like we've put a -- or a pre-trade  
7 analysis together, which came to 56 basis points, or  
8 something.

9 MR. WEINBERG: Can we go up to the top, top two  
10 e-mails, thanks.

11 BY MR. WEINBERG:

12 **Q.** So Mr. Franz is asking you and Mr. Boomgaardt, "Can you  
13 please urgently advise me on the questions that you had just  
14 read," correct?

15 **A.** Uh-huh.

16 **Q.** And you were saying the fee is two basis points, correct?

17 **A.** That's what it says, yeah.

18 **Q.** Even though on the e-mail before, six days earlier, you  
19 said you would use eight basis points commission?

20 MR. FRANK: Again, object to form, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Okay. It's two basis points, yes.

23 BY MR. WEINBERG:

24 **Q.** Do you recall just a second ago, on a January 9 e-mail,  
25 you were saying to Mr. Boomgaardt, "I would use eight basis

1 points commissions and two CPS in the US"?

2 **A.** Yes, I would like to see what this particular transition  
3 is about. In Germany we had what we would refer to sometimes  
4 as broker deals, that just merely move the securities from  
5 one account to another. So I'm not sure if this is a proper  
6 transition or not. I just don't know.

7 **Q.** So broker-dealers, would it be a routine practice to  
8 charge undisclosed markups on broker-dealers?

9 **A.** I don't think undisclosed was routine, no.

10 **Q.** Do you charge AHV, a Swiss client, undisclosed markups?

11 **A.** Yes, we did. That's the one that I just referred to.

12 MR. WEINBERG: Can we have 796 at the top.

13 THE WITNESS: In relation to Henkel, I don't think  
14 this was undisclosed. I might be mistaken here.

15 MR. WEINBERG: Moving on. We're going to look at  
16 796. Top paragraph, top e-mail.

17 BY MR. WEINBERG:

18 **Q.** Please read this and I'll ask whether it refreshes your  
19 recollection as to whether or not you wanted the client to  
20 know the revenues that were generated by this transition.

21 MR. FRANK: I ask that the witness be allowed to  
22 read the entire document.

23 THE COURT: Yes, you can read the whole chain, if  
24 you want.

25 THE WITNESS: I don't know what this is.

1 THE COURT: Is the Exhibit just one page?

2 MR. WEINBERG: No, it's three pages, Your Honor.

3 THE COURT: Do you want to just give him a paper  
4 copy? Would that be quicker?

5 MR. FRANK: Could we have a copy, as well, Your  
6 Honor?

7 THE COURT: Yes.

8 THE WITNESS: (Witness reviews document.)

9 Okay. I've read it.

10 BY MR. WEINBERG:

11 Q. Were you advising the State Street team not to disclose  
12 the amount of revenues to the client?

13 A. I've not -- this does not refresh my recollection. It  
14 could be. I would just be speculating. So "make sure that  
15 they treat this revenue confidential, as it is not to go back  
16 to the client," I have no idea what it refers to.

17 Q. Let's take the words and see if we can figure it out.

18 A. Well, I can see the words. I was just hoping that there  
19 was more information, so that I could explain it.

20 Q. Not to go back to the client means that you don't want  
21 the revenues to go back. You want them held confidential,  
22 doesn't it?

23 A. This revenue is confidential. That's what it says.

24 Q. Not to go back to the client?

25 A. That's what I read out. I just don't know what it is.

1       **Q.**    There was 790,000 euros made -- or was it 930,000?

2               MR. FRANK:   Your Honor, may we approach?

3               THE COURT:   Sure.

4               How much longer do you have, Mr. Weinberg?

5               MR. WEINBERG:  Judge, if we took a break, I could  
6       crystallize the remaining 15 minutes or so.

7               THE COURT:   Why don't we take the morning break now  
8       and then I can talk to them and we don't have to sit here and  
9       listen to this.

10              All rise for the jury.

11              (The jury exits the courtroom.)

12              THE COURT:   Mr. Pennings, you can step out.

13              You need to do it at sidebar?

14              MR. FRANK:   Not if the witness and jury aren't  
15       here, Your Honor.

16              THE COURT:   Okay.  You can all be seated.

17              Can I take a look at the exhibit?  That might be  
18       helpful.

19              MR. WEINBERG:  Sure.  I was directing him to the  
20       bottom of page 3 of the chain.

21              THE COURT:   It starts on page 3 and works its way  
22       backwards?

23              MR. WEINBERG:  Yes, I think so.

24              And this was my last question on this subject, Your  
25       Honor.



1 THE COURT: Okay.

2 What's P-A-T-T?

3 MR. WEINBERG: (Indicating.)

4 THE COURT: Okay. So the question you want to ask  
5 is what?

6 MR. WEINBERG: Is whether or not, at the time, he  
7 was essentially telling Mr. Gority (phonetic spelling) not to  
8 disclose to the client what the revenues were, the revenues  
9 were over 900,000 euros.

10 MR. FRANK: Your Honor, there's a couple of  
11 objections. One is that the witness has already testified  
12 that there's not information in this one document to refresh  
13 his recollection as to what's going on here. And in fact, on  
14 the face of this document, he himself is asking what those  
15 back revenues are. He has no idea what they are.

16 The second objection is this e-mail is plainly  
17 before the transition had occurred. No revenue had actually  
18 been earned at this point and so the question is misleading.  
19 They're talking about expected revenues. He's asking what  
20 revenues they are even talking about. So it's highly  
21 misleading to suggest that he's hiding revenues from the  
22 client when the deal had not been done.

23 THE COURT: Well, I don't find that it's highly  
24 misleading, because it could be --

25 MR. FRANK: Well, he's asking what revenues were

1 earned and, in fact, this is not what that document is  
2 talking about.

3 MR. WEINBERG: It's just as probative if he says  
4 that he understood this to be what revenues should be  
5 disclosed on a pre-trade estimate. It's all before Mr.  
6 McLellan and that's the point, Your Honor.

7 MR. FRANK: The point is that that was not the  
8 question that was asked. And more importantly, the witness  
9 has testified that this single document does not refresh his  
10 recollection and on the --

11 THE COURT: The problem more is that -- that the  
12 witness has said I don't really know what I meant when I  
13 wrote this. Right?

14 MR. WEINBERG: Yes. Which --

15 THE COURT: And you've asked him the question and  
16 he said, essentially, I wrote this and I don't know what I  
17 meant when I said treat the revenues confidential as to not  
18 go back.

19 MR. WEINBERG: And I'm testing the veracity of that  
20 claim to not know what it meant to treat the revenue  
21 confidential as to not going back to the client.

22 MR. FRANK: He's tested it, Your Honor. The  
23 witness has said he doesn't remember it. There's many  
24 reasons.

25 MR. WEINBERG: I think it helps the testing process

1 for there to be 900,000 euros at issue --

2 THE COURT: The 900,000 euros comes on page 3?

3 MR. WEINBERG: It comes from page 3, the MBO deal  
4 is given the revenue at 963.

5 MR. FRANK: That's like five e-mails back.

6 MR. WEINBERG: It's the same day. It's about an  
7 hour and a half back.

8 MR. FRANK: On the first page, there are different  
9 revenue numbers being talked about and the witness is  
10 questioning, on the document, what those revenues are. He  
11 doesn't know.

12 THE COURT: He doesn't know what one of them is.

13 MR. FRANK: Correct. And the other one is not  
14 900,000.

15 MR. WEINBERG: It's 963,417.

16 MR. FRANK: Not on the first page, Your Honor.

17 MR. WEINBERG: The third page has higher numbers.

18 THE COURT: Higher and lower.

19 MR. FRANK: The higher number, he doesn't know what  
20 it is, and the lower number is not what was being asked about  
21 and the revenues haven't been earned and he doesn't remember  
22 the document or the transaction and it's a year before the  
23 charged conspiracy.

24 MR. WEINBERG: Precisely. It's relevance.

25 THE COURT: Fine. I think that, I guess, Mr. Frank

1 has made a number of different objections. I don't think  
2 that it's misleading because the revenue hasn't been earned,  
3 because you're -- what you're asking about is whether you  
4 want to disclose it, be it in advance, when you make an  
5 estimate. We don't want to tell the client we're going to  
6 make this, or we don't want to tell the client we didn't make  
7 that. You're indifferent to that. It appears from this  
8 chain that they haven't done the transition. But the point  
9 is the same.

10 So he said he doesn't recall it, the transition or  
11 this. What question would you want to ask him now?

12 MR. WEINBERG: Does it refresh your recollection  
13 when you review an e-mail that shows 963,417 euros as the  
14 projected revenue, that you didn't want that revenue to go  
15 back to client, you wanted to be hidden from the client, to  
16 use Mr. Frank's words.

17 MR. FRANK: That's not what this e-mail says and  
18 the witness has testified that it doesn't refresh his  
19 recollection.

20 MR. WEINBERG: This e-mail means -- doesn't mean  
21 that it's not said.

22 MR. FRANK: Mr. Weinberg, himself, has testified he  
23 doesn't know what the revenues referred to when Your Honor  
24 asked him about back revenues, which is what's on the first  
25 page of this e-mail chain.

1 MR. WEINBERG: Not every word of this e-mail is  
2 relevant and I'm not offering the e-mail as an exhibit. I'm  
3 offering it to refresh his memory that he has practiced.  
4 This isn't the first time in his life that he didn't disclose  
5 revenues to clients as the Government has tried to put in  
6 this case.

7 MR. FRANK: That's not what we're talking about  
8 this case. Nondisclosed revenues are not the subject of this  
9 case, lies are the subject of this case. Second of all, the  
10 document at page 3 says, "the BATT feedback into the MBO deal  
11 is giving the revenue at 963" and in the very first e-mail,  
12 the last e-mail on the chain, the defendant says what are  
13 these BATT revenues anyway?"

14 So to ask him about revenues that, on the face of  
15 the document, he's indicating he doesn't know what they are,  
16 and to suggest that he's hiding those revenues whose identity  
17 he is unaware of from the client is highly misleading.

18 MR. WEINBERG: This is what redirect is for. "Make  
19 sure they treat this revenue confidential, as it is not to go  
20 back to this client" is distinct from the next sentence.  
21 "What are these BATT revenues anyway."

22 MR. FRANK: These are not -- the BATT revenues,  
23 which is what Mr. Weinberg is talking about with the 963 are  
24 not the revenues that the witness is talking about keeping  
25 confidential. And the witness has testified he doesn't know

1 the circumstances of the confidentiality. He has testified  
2 that there were deals where there were undisclosed revenues.  
3 He's cited the AHV deal as an example. Again, undisclosed  
4 revenues are not lies.

5 MR. WEINBERG: Undisclosed revenues are what this  
6 case is very much about, Your Honor. The Government wants to  
7 use lies. We believe, at most, the Government proof has  
8 established an undisclosed revenues which were consistent --

9 THE COURT: I don't think you can just read to him,  
10 though, things that -- in order to refresh his recollection,  
11 right? You can show it to him, but I don't think you can  
12 just read something and say -- you can say does -- looking at  
13 this, looking at that, does that refresh your recollection.  
14 Can you just read to him and say, does it refresh your  
15 recollection, X, Y, Z?

16 MR. WEINBERG: I think I can, Your Honor.

17 MR. FRANK: I do not think you can and that is what  
18 I've been objecting to. That is completely prohibited.  
19 That's admitting a document into evidence that's not in  
20 evidence. The point of putting a document in front of a  
21 witness, when he doesn't remember them, is to refresh his  
22 recollection.

23 THE COURT: I think you can test his memory. I  
24 don't think you're foreclosed from inquiring further, merely  
25 because he says he doesn't recall. However, I don't -- and

1 it seems to me, in reading this, there's two different -- my  
2 just quick readthrough, there's two different revenue streams  
3 that are being talked about. There's this so-called BATT  
4 money, 963,000 and change pounds, which appears like --  
5 reappears on the first page as the 1.3 million US dollars and  
6 then there's some other revenue that's referred to.

7 MR. WEINBERG: It matters not to me which revenues  
8 are at issue, what matters to me is he's telling Mr. Gority  
9 (phonetic spelling), don't tell the client about the  
10 revenues.

11 MR. FRANK: And that's been asked and answered.

12 MR. WEINBERG: Not to my satisfaction, Mr. Frank.  
13 It's cross exam and you get redirect.

14 MR. FRANK: And that doesn't address the issue --

15 THE COURT: You can ask him more about it. I don't  
16 think you're limited. The asked and answered objection is  
17 overruled, but I don't think you can read him these things  
18 and say well, haven't you read it? You know, you can say did  
19 you read it carefully, did you read all three e-mails, did  
20 you read all three pages. But I don't think you can say to  
21 him, okay, well, it says here, this, does that refresh your  
22 recollection. If he read it and it didn't refresh his  
23 recollection, it didn't.

24 MR. WEINBERG: Shortly after the break, Your Honor,  
25 and I do intend to wind down the cross, there may well be a

1 tape.

2 THE COURT: A tape.

3 MR. WEINBERG: It's about a two-minute tape. I'm  
4 glad to play it, because it is short, to the witness with Mr.  
5 Frank listening. It does relate to, again, Mr. Pennings' not  
6 disclosing or not wanting disclosed to clients, you know,  
7 different revenues in a pre-trade this time.

8 THE COURT: Oh, you're thinking that you might need  
9 to refresh his -- are you offering the tape, or is it  
10 something you just might want him to listen to to refresh his  
11 recollection.

12 MR. WEINBERG: It's something I would offer it, but  
13 I would also want to refer to it as refreshing his  
14 recollection, and see what he says about it.

15 THE COURT: Do you know which tape this is?

16 MR. FRANK: I have no idea, Your Honor, and I don't  
17 know that it's --

18 THE COURT: I don't know what -- so I don't know  
19 what you're asking me, Mr. Weinberg. Are you asking me to  
20 play it --

21 MR. WEINBERG: I'm just previewing it, since we had  
22 a lot of pretrial litigation about this, that this is that  
23 moment when tapes may become relevant. So while we're on a  
24 break, we can discuss this.

25 THE COURT: So why don't you -- a couple things.



1 One, why don't you tell Mr. Frank what it is. At this point,  
2 he's not talking to Mr. Pennings, anyway. There doesn't seem  
3 to be any downside to you. And you can see. Then you'll  
4 decide what your view is and then we can talk about it before  
5 I bring the jury back, as to what, if any, issues it  
6 presents. And whether there's no objections, or whether  
7 there are objections and what they are.

8 And if we need to play it to Mr. Pennings outside  
9 the presence of the jury, better to do it before we bring  
10 them back in, rather than send them out and back. So we'll  
11 give you time for that.

12 Second, about how much longer do you think you are,  
13 including that if you got all you wanted out of it?

14 MR. WEINBERG: I would say 20 minutes, is -- what I  
15 would ask the Court is to allow us 15 minutes. So I want to  
16 talk to Mr. McLellan and the defense team. This is an  
17 important witness.

18 THE COURT: I'll give you a little longer break, is  
19 what you're saying, than usual.

20 MR. WEINBERG: Thank you.

21 THE COURT: That's fine. So okay. And then in  
22 terms of redirect, obviously, you don't know for sure,  
23 because you haven't heard all the cross yet, and one thing  
24 you don't know what he's going to ask about, but ballpark at  
25 the moment.

1 MR. FRANK: Not very long, Your Honor, less than a  
2 half an hour, but it would be helpful to me in keeping it  
3 short, if I could have five minutes after the cross to  
4 collect my thoughts and get organized, if we could take a  
5 five-minute break.

6 THE COURT: So -- all right. We'll come back to  
7 that.

8 So tell him what the tape is and why don't you do  
9 that and then I'll see you in a couple minutes. Not to be  
10 done with the break, but just to see where we are on that, to  
11 figure out how long we need. So short redirect and then  
12 probably no recross, or short recross. So we certainly  
13 finish this witness before the end -- before 1 o'clock.

14 Will we want to --

15 MR. FRANK: We're going to probably -- assuming  
16 that we're not -- well, I already understand that one witness  
17 is going to be crossed for 45 minutes, so we're definitely  
18 going to go into the afternoon.

19 THE COURT: We're going into the afternoon. Okay.  
20 Fine. Okay. So nothing further to tell the jurors about the  
21 schedule today, sort of on track for what I told them before.  
22 Maybe we finish a little before 4:30, maybe not. Okay.

23 MR. WEINBERG: I'm going to show Mr. Frank three  
24 different alternative audios that we want to play.

25 MR. FRANK: Three different calls now?

1 MR. WEINBERG: Yes.

2 THE COURT: Why don't you do this. I'll be in the  
3 back. If there are any issues with respect to the audio that  
4 you want to raise with me, either in the form of objections  
5 or you want Mr. Pennings to hear them before, just tell  
6 Ms. Simeone and she'll get me, I'll be right here.

7 MR. WEINBERG: Thank you.

8 THE COURT: Otherwise, I'll -- so if I don't hear  
9 from you, I'll come back at 11:25 -- is 11:25 enough time?

10 MR. WEINBERG: That will be great.

11 THE COURT: Okay. And if I hear from you before,  
12 I'll come back before then, but if you have objections about  
13 those, get me before, as soon as you know, .

14 MR. FRANK: Thank you, Your Honor.

15 THE DEPUTY CLERK: This matter is in recess.

16 (Court in recess at 11:08 a.m.  
17 and reconvened at 11:20 a.m.)

18 THE COURT: Please be seated. So you have one  
19 issue?

20 MR. FRANK: Well, I've just been advised that none  
21 of the tapes are coming in. So I have no objections, Your  
22 Honor.

23 THE COURT: Okay.

24 MR. FRANK: So withdrawn. I really could use five  
25 minutes to --

1 MR. WEINBERG: He should use it now. I'm going to  
2 be about five or six more with the --

3 THE COURT: I'm sorry. Wait. Just to be clear.  
4 Do you need more time to talk to your client, Mr. Weinberg?

5 MR. WEINBERG: What I'm saying is as a result of  
6 the recess, I've shortened the --

7 THE COURT: So you now have five, six minutes of  
8 cross left?

9 MR. WEINBERG: Just a conclusion.

10 THE COURT: And a couple of tape issues that might  
11 have been are gone? Okay.

12 MR. FRANK: If I could use those five minutes, I'll  
13 be fine.

14 THE COURT: So why don't we take five more minutes  
15 now and then we'll go seamlessly --

16 MR. FRANK: I'll deal with the last five minutes on  
17 the fly.

18 THE COURT: There you go, I have full faith and  
19 confidence that you can do that.

20 MR. FRANK: Like a real lawyer.

21 THE COURT: Ah.

22 MR. WEINBERG: Well, I predict my conclusion.

23 THE COURT: Well, actually real lawyers do prepare.  
24 It's clear you have prepared, so you are a real lawyer. But  
25 to the extent what you're saying is real lawyers are -- I

1 think what it means you mean is that because you're so  
2 prepared, you're able to respond to the last five minutes,  
3 with -- based upon all the preparation that you're done,  
4 rather than merely making it up as you go along, which isn't  
5 really a real lawyer. But that I don't have any doubt that  
6 you're capable of doing, based on all the work that's been  
7 evident here. All right. So we'll take five minutes or so  
8 and then I'll come back out and get the jury.

9 MR. FRANK: Thank you. And I'd like a copy of the  
10 transcript for my mother.

11 THE DEPUTY CLERK: This matter is in recess.

12 THE COURT: I thought you were going to tell me you  
13 wanted it for Mr. Lelling.

14 MR. WEINBERG: Actually, his first job in private  
15 practice. He'll have it in a billboard on his office.

16 (Court in recess at 11:22 a.m.  
17 and reconvened at 11:29 a.m.)

18 THE COURT: Are you all set? Other than getting  
19 Mr. Pennings?

20 MR. WEINBERG: Yes, I've told Mr. Frank, Your  
21 Honor, that my cross-exam is concluded.

22 THE COURT: Oh, you don't have five minutes?

23 MR. WEINBERG: I wanted to stick within the  
24 schedule that I asked you for yesterday, two hours.

25 THE COURT: All right. If I go out again and come

1 back, will that -- will the Government --

2 MR. WEINBERG: Every time you go out, it gets  
3 shorter.

4 THE COURT: Yeah. Okay. So we're done. Let's get  
5 Mr. Pennings. So all you're going to do is say you don't  
6 have any more questions?

7 MR. WEINBERG: Yes.

8 THE COURT: Fine. Okay.

9 Maria, you can go get the jury.

10 You can be seated. Thank you.

11 (The jury enters the courtroom.)

12 THE COURT: All right, Mr. Weinberg, when we broke,  
13 you were doing your cross-examination. Do you have any other  
14 questions?

15 MR. WEINBERG: No other questions, Your Honor.

16 THE COURT: All right. Mr. Frank, do you have any  
17 redirect?

18 MR. FRANK: Briefly, Your Honor, thank you.

19 THE COURT: All right.

20 **REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

21 BY MR. FRANK:

22 **Q.** Mr. Pennings, you were asked some questions about your  
23 competitors, Citibank, Nomura, Bank of New York, Goldman  
24 Sachs, Credit Suisse, and Morgan Stanley, and whether they  
25 also had the capability of earning undisclosed revenues?

1       **A.** Yes.

2       **Q.** Do you recall those questions?

3       **A.** Yes.

4       **Q.** Those investment banks -- those are all investment banks,  
5 correct?

6       **A.** I believe --

7       **Q.** Citibank, Nomura, Bank of New York, Goldman Sachs, Credit  
8 Suisse, and Morgan Stanley?

9       **A.** Yes.

10      **Q.** And State Street is not an investment bank, is it?

11      **A.** No.

12      **Q.** And so those banks had legitimate ways to make money from  
13 trading for their own accounts that were unavailable to State  
14 Street; is that correct?

15               MR. WEINBERG: Objection.

16               THE COURT: Sustained as to the form.

17      BY MR. FRANK:

18      **Q.** Those banks had other ways of making money that were not  
19 available State Street?

20               MR. WEINBERG: Objection to leading.

21               THE COURT: The initial leading questions are fine,  
22 but this is more substantive.

23               MR. FRANK: This is redirect.

24               THE COURT: Right, but it's still direct. I don't  
25 have with you leading sort of as to preliminary matters, but

1 now you're getting to the substance of his testimony, and I  
2 think it should be not leading.

3 BY MR. FRANK:

4 **Q.** To what extent did you understand whether those banks had  
5 other ways of making money that were not available to you?

6 **A.** I knew that investment banks could make money in other  
7 ways.

8 **Q.** And that wouldn't involve lying to clients?

9 **A.** There are legitimate ways to make revenues without  
10 disclosing them and not lying.

11 **Q.** Thank you. You were asked some questions about Steve  
12 Smit and what he may or may not have known. Do you recall  
13 those questions?

14 **A.** Yes.

15 **Q.** If Steve Smit were aware of the fact that you were hiding  
16 commissions from clients and lying to them about it, what  
17 would that make Steve Smit?

18 MR. WEINBERG: Objection.

19 THE COURT: Sustained as to that. That's  
20 speculative and asks for a conclusion.

21 BY MR. FRANK:

22 **Q.** Did you tell Steve Smit you were lying to clients?

23 **A.** No, not in those words, no.

24 **Q.** You were asked some questions about what you told Mark  
25 Leaden. Do you recall that?



1       **A.**    Yes.

2       **Q.**    And you initially -- I believe you testified you  
3       initially told him that this was an error, what had happened  
4       to Royal Mail?

5       **A.**    Yes.    Yes.

6       **Q.**    And then Mr. Weinberg asked you -- contrasted that with  
7       what you told the tribunal, which was that the charges were  
8       intentional, correct?

9       **A.**    I'm not sure if I understand.

10      **Q.**    You told Mr. Leaden it was an error?

11      **A.**    Yes.

12      **Q.**    You told the tribunal it was on purpose and it was okay?

13      **A.**    That -- I'm not sure if I said that in the tribunal, but  
14      I wasn't truthful there.

15      **Q.**    Did you suggest to the tribunal that the Royal Mail  
16      charges were intentional and were okay?

17      **A.**    No, I never said they were intentional.

18      **Q.**    You had charged undisclosed commissions to Royal Mail.

19      **A.**    Yes.

20      **Q.**    You didn't tell the tribunal it was an accident.

21      **A.**    Umm --

22      **Q.**    Your position in the tribunal was that it was not an  
23      error, correct?

24                   MR. WEINBERG:  It's leading.  I object.

25                   THE COURT:  Sustained as to the form.

1                   Mr. Pennings, wait. That's all right.

2                   I sustained the objection, so you don't have to  
3 answer the question.

4 BY MR. FRANK:

5 Q. Was it your testimony in the tribunal that Royal Mail had  
6 been inadvertently charged?

7 A. Yes.

8 Q. In the tribunal, you told them that they had been  
9 inadvertently charged?

10 A. It was an error.

11 Q. You told the tribunal it was an error?

12 A. I'm not sure if I'm understanding what you're --

13 Q. I'm not sure you are, either.

14 THE COURT: No commenting on the --

15 A. I think I misunderstand what you were asking --

16 THE COURT: Nonleading questions, I think, will  
17 help.

18 BY MR. FRANK:

19 Q. What was your position with respect to Royal Mail in the  
20 tribunal.

21 A. That we didn't do anything wrong.

22 Q. And what was your position with respect to Royal Mail --  
23 okay. That you didn't do anything wrong?

24 A. Yes.

25 Q. You're aware, are you not, that the defendant told Mark

1 Hansen --

2 MR. WEINBERG: I object. This is going to be  
3 leading again, Your Honor.

4 MR. FRANK: It's going to be leading?

5 MR. WEINBERG: Yes, it is leading.

6 MR. FRANK: I'm establishing the background.

7 MR. WEINBERG: It's not background, it is a leading  
8 question.

9 BY MR. FRANK:

10 **Q.** Are you aware of what Mr. McLellan told Mr. Hansen at the  
11 beginning of the week of August 22nd?

12 **A.** I wasn't party to --

13 THE COURT: That's just yes or no, if you're aware  
14 of that.

15 THE WITNESS: No.

16 BY MR. FRANK:

17 **Q.** Have you seen an e-mail where Mr. McLellan -- Mr.  
18 McLellan asked you to draft a compliance letter?

19 **A.** Yes.

20 MR. WEINBERG: Beyond the scope, Your Honor.

21 MR. FRANK: No, it's not.

22 MR. WEINBERG: Yes, it is.

23 THE COURT: I'll overrule it for now.

24 BY MR. FRANK:

25 **Q.** You were asked to draft a compliance letter?

1       **A.**    Yes.

2       **Q.**    You were aware of who was to sign that letter?

3       **A.**    Yes.

4       **Q.**    Was the letter true or untrue?

5       **A.**    Untrue.

6               MR. WEINBERG:  Objection, Your Honor.

7               THE COURT:  Overruled.

8       BY MR. FRANK:

9       **Q.**    What did the letter say about the charges on Royal Mail?

10       **A.**    That they were an error.

11       **Q.**    And you're aware that Mr. McLellan later took the  
12       position with respect to compliance that the charges were not  
13       an error?

14               MR. WEINBERG:  Judge, I object.  That's a leading  
15       question.

16               THE COURT:  Sustained as to that, both as to  
17       leading and as to time frame.

18       BY MR. FRANK:

19       **Q.**    Are you aware of what Mr. McLellan told compliance at the  
20       end of the week of August 26th?

21               MR. WEINBERG:  Objection, beyond the scope.

22               MR. FRANK:  It's not beyond the scope, Your Honor.  
23       I'm happy to explain.

24               THE COURT:  I think I want to see both of you at  
25       sidebar.

1 (The following discussion held at the bench.)

2 MR. WEINBERG: My first objection is Mr. Frank may  
3 have gotten into the rhythm of cross in the last two hours,  
4 but his redirect is --

5 THE COURT: He's fixing that.

6 MR. FRANK: I am fixing that, but it's my  
7 understanding that on redirect, there's generally a little  
8 more latitude.

9 THE COURT: I agree. I'm giving you that.

10 MR. FRANK: Thank you, Your Honor. The issue is  
11 that Mr. Weinberg attempted to establish on cross-examination  
12 that Mr. Pennings was not credible, because he had first told  
13 Mark Leaden of compliance that it was an error and later  
14 testified that it was intentional and it was permitted.  
15 That's exactly what I'm establishing the defendant did.

16 MR. WEINBERG: I offered that for impeachment to  
17 show that he's willing to recuse another person. I did not  
18 go into the substance.

19 MR. FRANK: That's not what it was about.

20 MR. WEINBERG: Can I finish, Steve?

21 MR. FRANK: It was about that portion -- there was  
22 a different portion of the cross-examination about accusing  
23 another person. That portion was simply about the fact that  
24 he told Leaden it was an error and he later told the tribunal  
25 it was intentional.

1 MR. WEINBERG: Yes, and that was to establish, too,  
2 that he was prepared to make an accusation against Leaden. I  
3 did not go into the August 26th tapes, the August 26th  
4 letters.

5 THE COURT: I agree --

6 MR. FRANK: I'm entitled to establish that the  
7 defendant took the exact same stance that he -- it was an  
8 error and then --

9 MR. WEINBERG: No, you're not.

10 MR. FRANK: -- when that didn't work, he said it  
11 was intentional and permitted under the contract.

12 MR. WEINBERG: That is so far beyond.

13 THE COURT: It's beyond the scope. Because it's  
14 one thing -- his cross-examination was just about him being a  
15 liar on this. You said this and then you lied and threw  
16 somebody under the bus. But the --

17 MR. FRANK: But the defendant is lying in the same  
18 way, Judge.

19 THE COURT: He may be, but you have that evidence  
20 about his change of position. But as to the redirect, he  
21 didn't go into that. Not everything that's relevant in the  
22 case can you go in on redirect.

23 MR. FRANK: Okay.

24 THE COURT: So I think that if the only relevance  
25 of all this going to the compliance is to say that, look,

1 they make the point that McLellan did the same thing. He  
2 didn't go into what McLellan did or anybody did.

3 MR. FRANK: He's been going into what McLellan did  
4 the entire time.

5 THE COURT: No, it's about -- no, he didn't,  
6 actually. Mostly he went into what this guy said and did as  
7 being a liar. So I think this, going into that,  
8 comparatively, is beyond. Like just going into everything,  
9 what McLellan did or didn't do, but I don't see that as --

10 MR. FRANK: Well, how about this, Judge. Can I  
11 establish that after August 26th, they all took the position  
12 that it was permitted and intentional?

13 MR. WEINBERG: I did not go near August 26th. I  
14 didn't even play August -- the August 31st tape, Judge.

15 MR. GOLDSTEIN: On purpose.

16 THE COURT: Okay.

17 MR. WEINBERG: I kept this very close to  
18 impeachment. That was a deliberate decision, so the door  
19 wouldn't be open to another redirect that looked like direct.

20 MR. FRANK: The issue is he conferred with the  
21 defendant and then they all changed their stories.

22 MR. WEINBERG: I didn't go near that.

23 MR. FRANK: You established that he changed his  
24 story. I'm entitled to say that he did it after consultation  
25 with your client.

1 THE COURT: Well, I think he can ask him if he  
2 talked to your client, in between the two times that he  
3 changed his story. That's fair.

4 MR. WEINBERG: He didn't change his story. He had  
5 a consistent story.

6 THE COURT: No, he told -- he told Leaden it was a  
7 mistake and then he said it was intentional.

8 MR. WEINBERG: He admitted that he lied to  
9 Mr. Leaden. He never changed his story. His story was  
10 always that this was an error. That's what he told five  
11 different tribunals.

12 THE COURT: Right, but then he told the tribunal  
13 that it was intentional.

14 MR. FRANK: No.

15 THE COURT: He told the tribunal that he told  
16 Leaden that it was intentional.

17 MR. WEINBERG: That was on --

18 THE COURT: Right. And so he can elicit that it  
19 was after -- that he talked to your client in between.

20 MR. WEINBERG: Between the first.

21 THE COURT: Between the first Leaden conversation  
22 and the tribunal.

23 MR. WEINBERG: He told Freshfields that it was  
24 intentional.

25 MR. FRANK: Yes, that was after conferring with



1 your client. That was in September.

2 MR. WEINBERG: Do you have a basis to ask him that?

3 MR. FRANK: We heard him on August 26th conferring  
4 with your client. And your client advised him that he has  
5 now told Hansen. He's brought Hansen into the loop.  
6 Thereafter, they started relying on the contractual argument  
7 that was discussed on the 26th call.

8 MR. GOLDSTEIN: Your Honor, as I understand the  
9 ruling, the question is whether or not before he testified at  
10 the tribunal, he had a conversation with Mr. McLellan.

11 MR. FRANK: That's not what I'm establishing. What  
12 I'm establishing is throughout the week of August 22nd, he  
13 told Mr. Leaden that it was an error. They then conferred at  
14 the end of that week. Thereafter, they all, including  
15 this -- this witness adopted this story that it was  
16 intentional, that it was permitted by the contract, what they  
17 discussed on that August 26th claim. That's when the story  
18 changed.

19 THE COURT: You can put in that his story  
20 changed -- that his story changed on August 26th and that his  
21 story changed after talking to Mr. McLellan.

22 MR. FRANK: That's all I want to do.

23 THE COURT: That's different.

24 I overrule.

25 THE COURT: Are you objecting to that?

1 MR. WEINBERG: First, I object to story.

2 THE COURT: Well, yes.

3 MR. WEINBERG: If he's going to go back and get  
4 into August 26th to August 31st, it's just going to open more  
5 doors on cross that I didn't open on my cross-examination.

6 THE COURT: No, the only thing I understand him to  
7 be going into is that he began saying that it was  
8 intentional, his view of it. Could have a different view,  
9 but his view is that the witness didn't begin saying it was  
10 intentional until after a particular --

11 MR. WEINBERG: So the way it should be elicited, if  
12 at all, is when did you first say it was intentional and why,  
13 rather than Mr. Frank leading him into a conversation that  
14 attributes it to Mr. McLellan. He's got a very friendly  
15 witness who's very smart. He doesn't need leading questions.

16 MR. FRANK: I don't need to ask it in that vague  
17 and ambiguous way.

18 MR. WEINBERG: Yes, you do.

19 MR. FRANK: No, I can direct him to the time  
20 period.

21 THE COURT: You can direct him to the time period,  
22 but not, didn't you change your story after this phone call.  
23 That's --

24 MR. FRANK: Can I establish that the call came in  
25 between and then the story changed?

1 MR. GOLDSTEIN: I thought, Your Honor -- I'm a  
2 little confused.

3 THE COURT: You want to ask him, did you have a  
4 conversation with Mr. McLellan on such and such a date.

5 MR. FRANK: That's correct.

6 THE COURT: And then you say --

7 MR. FRANK: Thereafter -- -

8 THE COURT: What was your story before, what was  
9 your story after?

10 MR. FRANK: Correct.

11 THE COURT: That's allowed.

12 (Bench conference concluded.)

13 THE COURT: So ladies and gentlemen, let me just  
14 explain one thing to you that we've been discussing, which is  
15 you heard the lawyers refer to scope.

16 So what happens, as I explained to you before  
17 the -- it gets narrower as we go into the second round. So  
18 one issue that comes up, as a general matter, on redirect,  
19 what Mr. Frank is doing now, you're not entitled to ask  
20 questions that are beyond the scope, beyond the topics that  
21 were discussed during the cross-examination.

22 The simplest example is that if Mr. Weinberg says I  
23 have no questions for a witness on cross-examination, then  
24 the scope is zero, and so the other -- then if the other  
25 lawyer says Judge, I want to do redirect, the answer is no.

1 There's nothing to redirect on, because there was no  
2 cross-examination. If the lawyer asked one question, to keep  
3 it very simple, that was related to one thing. On redirect,  
4 you're limited to that -- to that one area. It's not  
5 reopening everything. So we've been discussing what are the  
6 parameters and what's the scope. And so what happens on  
7 recross is it's generally limited to the scope of what the  
8 redirect is.

9 Go ahead, Mr. Frank.

10 BY MR. FRANK:

11 **Q.** Mr. Pennings, you were asked some questions about what  
12 you told Mark Leaden of compliance, during the week of  
13 August 22, 2011. Do you recall those questions?

14 **A.** By Mark Leaden, yes.

15 **Q.** What did you tell Mark Leaden during the week of  
16 August 22nd about whether the charges on Royal Mail were  
17 intentional, or in error?

18 **A.** They were in error.

19 **Q.** At the end of the week of August 22nd, while you were on  
20 vacation, you had conversations with the defendant. Do you  
21 recall that?

22 **A.** Yes.

23 **Q.** And in particular, you had a conversation that we  
24 listened to with the defendant and Richard Boomgaardt on  
25 August 26th, do you recall that?

1       **A.** Yes.

2       **Q.** Your employment tribunal, your interviews with  
3       Freshfields, all of the various statements that Mr. Weinberg  
4       went through with you, occurred after August 26th, correct?

5       **A.** Yes.

6       **Q.** In those interviews, what, if anything, did you say about  
7       whether you were entitled by the contract to charge  
8       undisclosed commissions on Royal Mail?

9       **A.** As of -- in some of those interviews, I told them that  
10      the contract allowed it.

11      **Q.** Thank you. You were asked some questions about your  
12      meetings with -- your meeting with State Street lawyers in  
13      April of 2011. Do you recall those questions?

14      **A.** Yes.

15      **Q.** You were asked whether any lawyer challenged you on a  
16      provision of the standard transition management agreement,  
17      permitting -- providing for no duty to disclose profits.

18                      Do you recall those questions?

19      **A.** Yes.

20      **Q.** With respect to each of the clients that we have talked  
21      about today, did you make representations to them about what  
22      you would be charging?

23      **A.** No.

24      **Q.** With respect to the clients that are the subject of this  
25      case, did you make representations to them about what fees

1 State Street would be charging?

2 MR. WEINBERG: I object. It's just been asked and  
3 answered, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: We didn't.

6 BY MR. FRANK:

7 Q. Did you tell Royal Mail what you were going to charge?

8 A. We told them we were going to charge a management fee in  
9 lieu of the commissions.

10 Q. That's right. And what did you --

11 THE COURT: No, not the, "That's Right."

12 MR. FRANK: I'm sorry, Your Honor.

13 BY MR. FRANK:

14 Q. And did you make similar representations to Sainsbury's,  
15 NTMA, Eircom?

16 A. Yes, the clients were told that we were charging only a  
17 small project management fee in lieu of the commissions.

18 Q. Thank you.

19 THE COURT: You don't need to thank the witness,  
20 Mr. Frank.

21 MR. FRANK: I'm thanking him for the answer, not  
22 the substance, Your Honor, but I will refrain from thanking  
23 him.

24 BY MR. FRANK:

25 Q. And during that April 2011 meeting with lawyers, did you

1 tell them that you had charged clients a commission after  
2 telling the clients you would not charge a commission?

3 **A.** No, I did not tell them that.

4 **Q.** You were asked questions about statements you made to the  
5 employment tribunal about acting in good faith, not breaching  
6 the contract, others within State Street knowing what you  
7 were doing.

8 Do you recall those questions?

9 **A.** Yes.

10 **Q.** What, if anything, do you recall about whether the judge  
11 believed you?

12 MR. WEINBERG: I object.

13 THE COURT: Sustained.

14 BY MR. FRANK:

15 **Q.** What, if anything, do you recall about a judgment that  
16 was made about your credibility in those proceedings?

17 MR. WEINBERG: I object.

18 THE COURT: Sustained.

19 BY MR. FRANK:

20 **Q.** Did you win or lose?

21 MR. WEINBERG: I object.

22 THE COURT: Overruled.

23 THE WITNESS: I got an unfair dismissal outcome,  
24 but I got no money and the comment was: You could have been  
25 fired, anyway.

1 BY MR. FRANK:

2 Q. You made similar statements in the disciplinary  
3 proceedings that you were asked about within State Street?

4 A. Yes.

5 Q. Did you get your job back?

6 A. No.

7 Q. Were your benefits taken away?

8 A. Yes.

9 Q. You were asked some questions about State Street paying  
10 money back to clients, when there were disputes on occasion.  
11 Do you recall those questions?

12 A. Yes.

13 Q. In those instances, did you lie to clients about what you  
14 were paying back?

15 A. No.

16 Q. You were asked a series of questions about the first KIA  
17 transition, KIA 115. Do you recall those questions?

18 A. Yes.

19 Q. What, if anything -- and you were asked about  
20 conversations with Mr. Das about the spread?

21 A. Yes.

22 Q. Do you recall an e-mail -- do you recall what you said to  
23 Mr. Das about from whom the spread would be earned in KIA  
24 115?

25 A. Yes.



1 Q. What did you tell him?

2 A. The other side.

3 Q. What, if anything, did you recall telling the defendant  
4 about KIA's sophistication?

5 A. They weren't very sophisticated.

6 Q. Do you recall using the word "clueless"?

7 A. Yes.

8 Q. With respect to the 115 transition, you sent them a  
9 periodic notice. Mr. Weinberg showed it to you, do you  
10 remember that?

11 A. Yes.

12 MR. FRANK: Could we look at Exhibit 11-1, please.

13 THE COURT: That's in evidence, right?

14 MR. FRANK: Yes, Your Honor.

15 Could we look at the second page. Could we blow  
16 that up, please, and enlarge.

17 BY MR. FRANK:

18 Q. And this periodic notice says "commission fees zero." Do  
19 you see that?

20 A. Yes.

21 Q. And Mr. Weinberg pointed you to footnote two?

22 A. Yes.

23 Q. "All bonds will be priced net as per market convention."

24 Do you see that?

25 A. Yes.

1 Q. Is that what you got back from KIA?

2 A. I think it was changed.

3 MR. FRANK: Could we show, for the witness only,  
4 Exhibit 21-1, please. If you could blow up the whole page.  
5 BY MR. FRANK:

6 Q. Do you recognize that, Mr. Pennings?

7 A. Yes.

8 Q. What is it?

9 A. It's a periodic notice that we got back from the KIA,  
10 which was wrong.

11 MR. FRANK: Government offers 21-1.

12 MR. WEINBERG: No objection.

13 THE COURT: Admitted.

14 (Exhibit No. 21-1 admitted into evidence.)

15 MR. FRANK: Could we enlarge the -- there we go.  
16 Thank you. And if you could highlight the middle provision  
17 there, transaction 116.

18 BY MR. FRANK:

19 Q. Can you tell us what that refers to, Mr. Pennings, that  
20 highlighted portion?

21 A. A Japanese equity transition.

22 Q. Number 116?

23 A. Number 116, yes.

24 Q. What transition were you dealing with with Mr. Das here?

25 A. 115.

1 Q. Was it a Japanese equity transition?

2 A. No.

3 Q. But this is what they sent back?

4 A. That's what they sent back initially, yes.

5 Q. And if we look at the next page, does that look like what  
6 you sent them?

7 A. No.

8 Q. It refers to crossing. Do you see that?

9 A. Yes.

10 Q. Is that relevant to a bond transition?

11 A. No.

12 Q. Did you take another stab at it and send them another  
13 periodic notice?

14 THE COURT: What did you do next?

15 BY MR. FRANK:

16 Q. What did you do next?

17 MR. FRANK: I'll get it eventually.

18 THE WITNESS: I contacted them and sent them the  
19 correct version again.

20 MR. FRANK: Could we look at, for the witness only,  
21 23-1, please?

22 BY MR. FRANK:

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. What is it?

1     **A.** It says 115, the periodic notice.

2     **Q.** Is this what you sent back to them the second time?

3     **A.** I believe so, yes.

4             MR. FRANK: The Government offer 23-1.

5             MR. WEINBERG: No objection.

6             THE COURT: Admitted.

7             (Exhibit No. 23-1 admitted into evidence.)

8     BY MR. FRANK:

9     **Q.** And you've corrected that. It now says transition 115,  
10    fixed income. Do you see that?

11    **A.** Yes.

12    **Q.** Could we look at page 2. There's no reference to a  
13    commission on this document, is there?

14    **A.** No.

15    **Q.** What had you told Mr. Das about a commission?

16    **A.** Zero.

17    **Q.** And in the footnotes, can you show us the footnote that  
18    refers to bonds being priced net with all markups included in  
19    the spread?

20    **A.** If it was there, but it's not.

21    **Q.** It's not there?

22    **A.** No.

23    **Q.** Can we look -- is this what you got back from KIA, after  
24    you sent it to them?

25    **A.** I think we only got the first page back.

1 MR. FRANK: Could we show the witness only  
2 Exhibit 25-1, please.

3 BY MR. FRANK:

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. It's the signed period notice.

8 Q. Do you recall whether or not it was a one-page or a  
9 two-page document when you got it back?

10 A. I believe this was it, one page.

11 MR. FRANK: Government offers 25-1.

12 THE COURT: Any objection?

13 MR. WEINBERG: No objection.

14 THE COURT: Admitted.

15 (Exhibit No. 25-1 admitted into evidence)

16 BY MR. FRANK:

17 Q. That's what you got back, right?

18 A. Yes.

19 Q. It didn't have the table, it didn't have the page two?

20 A. No.

21 Q. Thank you. You were asked some questions about the  
22 second KIA transition and the review that legal performed  
23 with respect to whether you could trade opposite the rates  
24 desk, do you recall that?

25 A. Yes.

1       **Q.** You were asked some questions about Exhibit 53. Could we  
2 look at Exhibit 53, please?

3               THE COURT: That's now in evidence, right?

4               MR. FRANK: Yes, it is, Your Honor.

5 BY MR. FRANK:

6       **Q.** Mr. Weinberg showed you the bottom e-mail. Do you recall  
7 that?

8       **A.** Yes.

9       **Q.** He didn't show you the top e-mail, did he?

10      **A.** I spotted it, but he didn't.

11      **Q.** He didn't ask you any questions about it?

12      **A.** Didn't ask any questions, no.

13      **Q.** What did you say to the defendant, Tom Bryant, and Chris  
14 Carlin about KIA 121?

15      **A.** "I don't want to look at the contract with legal, at  
16 all."

17      **Q.** Why didn't you want to look at the contract with legal?

18      **A.** We didn't want to risk the trade. If it was going to be  
19 scrutinized, we worried that they were going to spot the fact  
20 that we said zero and it wasn't zero and they were also going  
21 to spot that it was an equity one-off transition management  
22 agreement and this was a fixed income deal and I didn't like  
23 the rates desk.

24      **Q.** Could we look at Exhibit 54, please. That same night,  
25 when Mr. McLellan asked you whether legal looked at the

1 agreement, what did you respond?

2 **A.** "Absolutely not, nor did they look at the periodic  
3 notice. This can of worms stays closed."

4 **Q.** Could we look at Exhibit 57, please. And if we look at  
5 the bottom e-mail, Mr. McLellan said, "Send to Krystyna or  
6 Simone, whoever you like better. I would be surprised if  
7 they accept."

8 Do you recall that?

9 **A.** Yes.

10 **Q.** And then you asked -- do you recall asking "accept what?"

11 **A.** Yeah, "us letting rates quote?"

12 **Q.** And then he responded, "Letting us to the trade, right"?

13 **A.** Yes.

14 **Q.** And again, this was after KIA 115 had already happened  
15 and you hadn't consulted legal?

16 **A.** Yes.

17 **Q.** And after Dutch Doctors?

18 **A.** Yes.

19 **Q.** And ultimately, it was your testimony and you told  
20 Mr. Weinberg on cross-examination that you did get legal's  
21 authorization, correct?

22 **A.** That --

23 **Q.** They let you do the trade?

24 **A.** Yeah, they let us do the trade, yes.

25 **Q.** And that was after getting the periodic notice, correct?

1       **A.** Yes.

2       **Q.** Could we look at Exhibit 52, please. 52-1. Do you  
3 recognize this to be the periodic notice that was sent to  
4 legal to review?

5       **A.** Yes.

6       **Q.** And if we could blow up the bottom paragraph there,  
7 transition 121. That refers to a fixed income transaction.  
8 Do you see that?

9       **A.** Yes.

10       **Q.** And I'd like to look with you at page 2, please. Can you  
11 see that, Mr. Pennings?

12       **A.** Yes.

13       **Q.** Could we blow up the bottom three parts there of the  
14 table. Yes.

15               You see the reference to crossing, "in-kind  
16 crossing," and "external crossing"?

17       **A.** Yes.

18       **Q.** Is crossing a fixed income concept or an equities  
19 concept?

20       **A.** Equities.

21       **Q.** Would crossing have any applicability to this trade?

22       **A.** No.

23       **Q.** Could we go back out and look at the rest of the chart?

24               Do you see any other reference to commissions on  
25 this chart?



1       **A.** No.

2       **Q.** It's silent; is that correct?

3       **A.** Yes.

4       **Q.** And that's what legal was looking at, a silent document,  
5 correct?

6       **A.** I don't know if they were looking at it. I don't know  
7 what they looked at. It just said zero charges in the  
8 crossing bit.

9       **Q.** In crossing, correct?

10      **A.** In crossing.

11      **Q.** And it says, "Extra compensation, custody charges to be  
12 met by the transition manager."

13                   Do you see that?

14      **A.** Yes.

15      **Q.** But there's no reference to commissions, is there?

16      **A.** No.

17                   MR. FRANK: You can take that down.

18      BY MR. FRANK:

19      **Q.** You were asked some questions at the beginning of your  
20 cross-examination yesterday about your decision to cooperate.  
21 Do you recall those questions?

22      **A.** Yes.

23      **Q.** You were asked whether you calculated the benefit of  
24 working with the prosecution versus the benefits of going to  
25 trial. Do you recall Mr. Weinberg asking you that?

1       **A.** Yes.

2       **Q.** When did you decide to plead guilty, Mr. Pennings?

3       **A.** In -- in 2017, I pled guilty in June.

4       **Q.** Could we look at Exhibit 203, please.

5               Do you recognize this as your plea agreement?

6       **A.** Yes.

7       **Q.** Can we blow up the date? What was the date this plea  
8 agreement was transmitted to you, sir?

9       **A.** May 31, 2017.

10       **Q.** Could we look at page 9, please. What is the date that  
11 you signed it?

12       **A.** The 2nd of June, 2017.

13       **Q.** At the time that you signed this agreement to plead  
14 guilty to the crime with which you were charged, had the  
15 Government offered you a cooperation agreement?

16       **A.** I did not have a cooperation agreement, no.

17       **Q.** At the time you signed this agreement to plead guilty,  
18 had you even met with the Government?

19       **A.** Other than in court, when I did my earlier plea, no.

20       **Q.** Did you have any sort of promise of a cooperation  
21 agreement?

22       **A.** No, I wasn't promised anything.

23       **Q.** Sitting here today, do you recall the date that you first  
24 met with the Government to be interviewed?

25       **A.** When I came here to plead guilty, I believe.

1       **Q.** That was the first time?

2       **A.** Yes. It was in -- again, in June.

3               MR. FRANK: May I approach the witness, Your Honor?

4               THE COURT: You may.

5       BY MR. FRANK:

6       **Q.** Take a look at that document, Mr. Pennings. Does that  
7 refresh your recollection that the first time you met with  
8 the Government --

9               THE COURT: Let him see if it refreshes his  
10 recollection, and then ask the question.

11              Is the question when?

12              MR. FRANK: Yes.

13       BY MR. FRANK:

14       **Q.** Does that refresh your recollection as to when was the  
15 first time you met with the Government?

16       **A.** Yes.

17       **Q.** When was the first time you met with the Government?

18       **A.** June 26th.

19       **Q.** And when did you enter into a cooperation agreement with  
20 the Government?

21       **A.** After that.

22       **Q.** And that was weeks after you had agreed to plead guilty  
23 to the crime with which you were charged. Is that true?

24       **A.** Yes.

25              MR. FRANK: No further questions.

1 THE COURT: Any recross?

2 MR. WEINBERG: Yes. Very short, Your Honor.

3 **RECROSS-EXAMINATION BY COUNSEL FOR DEFENDANT**

4 BY MR. WEINBERG:

5 Q. Mr. Frank showed you a number of periodic notices back  
6 and forth from KIA, correct?

7 A. Yes.

8 Q. The fact is, as you testified at the very end of  
9 yesterday, Mr. Das told you to go with the flow; is that  
10 correct?

11 A. He did say something like that, yes.

12 Q. And the flow meant the spread, correct?

13 MR. FRANK: Objection to what Mr. Das meant.

14 MR. WEINBERG: To you.

15 THE COURT: To what it meant to you. Overruled as  
16 to that.

17 THE WITNESS: I believe he said it on two  
18 occasions. It was also in relation to the -- I mean, what --  
19 this was in relation to the periodic notice that didn't make  
20 any sense whatsoever.

21 BY MR. WEINBERG:

22 Q. And as you've told us many times, Mr. Das knew that you  
23 understood that KIA knew that State Street was going to make  
24 money on this transition; it wasn't really doing it for free.

25 A. I believe Das understood that.

1     **Q.** KIA 121, Mr. Frank showed you an e-mail where you did not  
2     want the contract reviewed, correct?

3     **A.** Correct.

4     **Q.** But the fact is that you also understood that  
5     Mr. McLellan called for the contract, correct?

6     **A.** He had some further conversations, and it was clear that  
7     we had to give the contracts, yes.

8     **Q.** And so Mr. McLellan asked you for the contract and the  
9     periodic notice, and he made the decision to send them on to  
10    the head of Global legal, Brian Woodard, and then to the UK  
11    legal team, correct?

12    **A.** I don't exactly know what happened in the background, but  
13    I was asked by Ross to send the contract because I enlisted  
14    his help in getting this sorted.

15    **Q.** And you see in the e-mails where US legal was saying that  
16    UK legal would review the contract, review the documents, and  
17    make a decision whether to authorize KIA 121, correct?

18    **A.** I've seen the e-mails, yes.

19    **Q.** So regardless of whether you wanted or didn't want legal  
20    to review the contract, they certainly did review it, to your  
21    understanding, on November 3, before they authorized the  
22    transition?

23    **A.** They received the contracts, yes.

24    **Q.** You weren't in their office?

25    **A.** I weren't in their office. I'm assuming they looked at

1 it.

2 **Q.** If they did their job, you assume they reviewed the  
3 contract and okayed the transition?

4 **A.** They okayed the transition.

5 **Q.** Mr. Frank led you through a chronology of a plea, a  
6 meeting with the Government, and a cooperation agreement,  
7 correct?

8 **A.** Yes.

9 **Q.** Your going to see the Government in June was not a  
10 surprise to you. You had made the decision even before you  
11 pled that you would attempt to get Mr. Frank and Mr. Johnston  
12 to back you up and give you a cooperation agreement that  
13 might help you go home to England. Isn't that a fact?

14 **MR. FRANK:** Objection to getting them to "back you  
15 up," Your Honor.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** Can you quickly restate the  
18 question -- or not restate, repeat the question? Sorry.

19 **BY MR. WEINBERG:**

20 **Q.** It was your hope and expectation, even before you pled  
21 guilty, that by cooperating with the prosecutors and by  
22 testifying against Mr. McLellan, that that would help you get  
23 home to England?

24 **A.** First of all, I'm not testifying against Mr. McLellan.  
25 It was my hope that I would get a cooperation agreement that

1 would help me in -- get leniency.

2 **Q.** Thank you. We have spent a lot of time, direct, cross  
3 exam, talking about truth, correct?

4 **A.** Yes.

5 **Q.** I want to ask you whether you recall an e-mail with Dalia  
6 Debs, where she asked you whether or not --

7 **MR. FRANK:** Beyond the scope, Your Honor.

8 **THE COURT:** I don't know what it is. I can't rule  
9 on that at the moment.

10 **MR. WEINBERG:** I probably need to approach the  
11 bench in order to tell Your Honor what it is.

12 **THE COURT:** Fine. I'll look at it.

13 (The following discussion held at the bench.)

14 **MR. WEINBERG:** This is the question, and this is  
15 the answer Dalia Debs --

16 **THE COURT:** (The Court reviews the document.)  
17 So what do you want to ask?

18 **MR. FRANK:** May I see?

19 **THE COURT:** Yes.

20 **MR. WEINBERG:** "Do you lie about lying?"

21 **MR. FRANK:** How is that relevant to the scope of  
22 my --

23 **MR. WEINBERG:** Because your scope went into things  
24 that you said that he had different stories and --

25 **MR. FRANK:** I didn't ask him about lying.

1 MR. WEINBERG: Well, I don't have to use the word.

2 THE COURT: Truthfulness, I think you can ask him  
3 that.

4 MR. FRANK: Where's the -- okay. That's her  
5 statement to him?

6 MR. WEINBERG: Yes, lie about lying if needed.

7 MR. FRANK: May 28, 2010, Your Honor. They're  
8 clearly playing around. This is highly prejudicial, Your  
9 Honor.

10 THE COURT: He's not introducing the exhibit. He's  
11 just asking the question. He's not --

12 MR. FRANK: The response, then, is, "What do you  
13 lie about? That State Street is fabulous to your clients?"  
14 They're talking "LOL." This is clearly in jest, and I have  
15 not had an opportunity to redirect again and that is  
16 extraordinarily misleading.

17 MR. WEINBERG: He can say it's in jest, but it's  
18 his words.

19 MR. FRANK: This is quintessential 403. It is not  
20 relevant, it is not actually talking about lying.

21 MR. WEINBERG: Of course he is.

22 MR. FRANK: This is a complete sandbag, Your Honor.  
23 He's been holding this for recross -- for recross and it  
24 is -- it is, frankly, outrageous. This has no relevance to  
25 any questions I asked. It's obviously a joke, and there is



1 going to be no opportunity to fix it.

2 MR. WEINBERG: The whole redirect was aimed at  
3 contradicting his prior statements.

4 MR. GOLDSTEIN: And Mr. McLellan --

5 THE COURT: So this is what -- you can ask him: Do  
6 you lie about lying? You can show him -- you can't admit  
7 this.

8 MR. WEINBERG: Yeah.

9 THE COURT: And you can't admit it indirectly by  
10 just reading it. But you can ask him, do you lie about  
11 lying? And if he says no --

12 MR. FRANK: Your Honor.

13 MR. WEINBERG: I'll ask him, does it refresh.

14 MR. FRANK: It's unfair to the jury that the  
15 document says that. It's incredibly prejudicial, and there  
16 would be no opportunity to fix it. If there was a redirect,  
17 then it would be different. But for him to ask that question  
18 and leave the jury with that impression, and the impression  
19 in which he said it and there's an LOL, it's completely  
20 obviously a joke, and the witness is extraordinarily  
21 prejudicial.

22 MR. WEINBERG: It's probative to the fact that he  
23 lies about lying.

24 MR. FRANK: It's probative of a joke.

25 MR. JOHNSTON: It's a sandbag.

1 THE COURT: Can I see it again?

2 MR. JOHNSTON: It's a sandbag for sure.

3 THE COURT: (The Court reviews the document.)

4 I guess I would have thought that this would have  
5 been probative on cross, not just recross.

6 MR. JOHNSTON: It really wasn't probative right on  
7 cross.

8 MR. WEINBERG: I made the judgment not to use it  
9 then. And Mr. Frank went back to his credibility, rather  
10 than resting off of cross.

11 MR. FRANK: Now, come on, that's ridiculous.

12 MR. WEINBERG: It's a responsive or regressive.

13 MR. FRANK: This is not probative of anything.  
14 It's a joke.

15 MR. WEINBERG: You know lots of people who joke  
16 about lying about lying?

17 THE COURT: I think you can -- you can't admit the  
18 e-mail, you can't read the e-mail. You can ask him: Do you  
19 lie about lying?

20 MR. FRANK: Your Honor, I would ask that  
21 Mr. Weinberg be directed not to show the e-mail, not to  
22 suggest there's an e-mail, not to suggest there's a document.

23 MR. WEINBERG: Well, I may want to refresh his  
24 recollection that he said it, if he denies it.

25 THE COURT: If he says he doesn't and you want to

1 refresh his recollection, you can show it to him to refresh  
2 his recollection. But then you have to give him a chance to  
3 explain it, which would be -- he might explain it as like --  
4 you have to give him a chance to say, "What did you mean by  
5 that, and what was this about?" So that's -- if you refresh  
6 his recollection, he's entitled to an opportunity -- the  
7 witness to explain.

8 MR. WEINBERG: What I'll say is: Do you lie about  
9 lying? Have you ever said to anyone you lie about lying?

10 MR. FRANK: That's misleading.

11 MR. WEINBERG: It's not misleading.

12 MR. FRANK: It is misleading, because it suggests  
13 that he said it in a serious comment.

14 MR. WEINBERG: Mr. Frank wants me not to use the  
15 document. That's the middle ground.

16 THE COURT: You can do that.

17 MR. FRANK: Your Honor, it is extremely misleading.  
18 I would then ask that I be given an opportunity to ask a  
19 couple of questions on re-redirect. This is leaving the jury  
20 with an absolutely misleading impression. To say, "Did you  
21 ever tell anyone did you lie about lying," suggests that it  
22 was said in seriousness, that it was said in connection with  
23 this case. It has no relevance to anything here. It's  
24 extremely prejudicial.

25 THE COURT: You have to date it.

1 MR. WEINBERG: I can date it. Did you tell a  
2 friend that you lie about lying?

3 MR. FRANK: Your Honor, it was a joke.

4 THE COURT: That's not obvious that it's a joke.

5 MR. FRANK: If she says LOL.

6 THE COURT: Yeah, but not about that. That's her,  
7 not him.

8 MR. GOLDSTEIN: The witness is capable of  
9 explaining things for the witness themselves. It's not  
10 everything that the lawyer has to explain.

11 THE COURT: All right.

12 (Bench conference concluded.)

13 BY MR. WEINBERG:

14 **Q.** All right. Mr. Pennings, back in May of 2010, did you  
15 tell a friend that you lied about lying?

16 **A.** I have no idea.

17 **Q.** You could have, maybe you did, maybe you didn't?

18 **A.** Did I tell a friend that I lie about lying?

19 **Q.** Yes.

20 **A.** I don't know. I don't recall that.

21 MR. WEINBERG: I have no other questions.

22 THE COURT: All right. Thank you very much,  
23 Mr. Pennings. You're excused.

24 Next witness.

25 MR. JOHNSTON: Your Honor, the Government calls

1 Dean Johnson to the stand.

2 THE COURT: Mr. Johnston, does he need those  
3 document things?

4 MR. JOHNSTON: No, he doesn't. I can retrieve  
5 those.

6 (The witness was duly sworn.)

7 THE COURT: Go ahead.

8 **DEAN JOHNSON**

9 having been duly sworn, testified as follows:

10 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

11 BY MR. JOHNSTON:

12 **Q.** Could you please state your name, sir.

13 **A.** My name is Dean Johnson.

14 **Q.** How old are you?

15 **A.** I am 60 years old.

16 **Q.** Where do you live?

17 **A.** I live in London, England.

18 **Q.** Where do you work?

19 **A.** I work for Sainsbury's in London.

20 **Q.** What is Sainsbury's?

21 **A.** Sainsbury's is one of the largest retailers in the United  
22 Kingdom, specializing in groceries.

23 **Q.** How large is Sainsbury's?

24 **A.** How large is Sainsbury's? The capitalization of the  
25 company is probably about \$9 billion.

1 Q. How many stores are there?

2 A. Approaching 1,000.

3 Q. How many employees work at Sainsbury's?

4 A. Approaching 200,000.

5 Q. What do you do at Sainsbury's?

6 A. I'm the investments officer for the pension fund.

7 Q. How large is this pension fund?

8 A. Right now it is 11 billion sterling, which is about 15  
9 billion US dollars.

10 Q. For whose benefit is this pension fund?

11 A. It's for the benefit of the employees and former  
12 employees, employees of Sainsbury's.

13 Q. How many beneficiaries would that be?

14 A. About 80,000.

15 Q. What's the average size of a pension with Sainsbury's, in  
16 a fund that you manage?

17 A. Probably a -- about 7,000 pounds.

18 Q. A year?

19 A. Per year, yeah.

20 Q. How long have you managed the Sainsbury's pension fund?

21 A. This is my tenth year.

22 Q. How long have you been in the asset management field,  
23 generally?

24 A. Over 30 years now.

25 Q. What is your educational background?

1     **A.** I've a bachelor's degree from the University of  
2     Birmingham in England.

3     **Q.** Do you have any professional qualifications?

4     **A.** Yeah. I'm a fellow of the Pensions Management Institute  
5     in the UK.

6     **Q.** How do you view your role as a pension fund manager?

7     **A.** My role is to execute the investment strategy, make sure  
8     that it's on track. I manage all the relationships that the  
9     pension fund has with banks, investment managers, advisors.  
10    I'm in charge of all of those things.

11   **Q.** What, if any, responsibility do you feel towards the  
12   funds that you manage?

13   **A.** I have what's known as a fiduciary responsibility  
14   that's -- UK pension funds are set up under a trust, so I  
15   effectively work with the trustees of the pension fund for  
16   the benefit of the beneficiaries. What we say is we have to  
17   treat all the assets as if they were our own.

18   **Q.** But they're not your own?

19   **A.** They're not our own, but as a trustee, that's what you  
20   have to do.

21   **Q.** Whose assets are they?

22   **A.** The assets belong to the beneficiaries of the pension  
23   fund.

24   **Q.** How, if any, does this obligation affect your role in  
25   deciding and controlling costs?

1 MR. GOLDSTEIN: Excuse me. I object, Your Honor.  
2 I'd like to be heard at sidebar, please.

3 THE COURT: All right.

4 (The following discussion held at the bench.)

5 THE COURT: What's the objection?

6 MR. GOLDSTEIN: Mr. Johnston is trying to elicit  
7 from the witness an understanding of his role as a fiduciary,  
8 I think as a way in closing to argue that the language in  
9 some of these contracts was still the similar duty upon State  
10 Street.

11 MR. FRANK: No.

12 MR. GOLDSTEIN: So it's irrelevant in term of what  
13 he viewed his rule --

14 MR. FRANK: No. --

15 MR. GOLDSTEIN: Can I finish?

16 MR. JOHNSTON: Sure.

17 MR. GOLDSTEIN: Thank you. So it's irrelevant in  
18 terms of what his view is, as to his beneficiaries. It has  
19 no bearing in term of the issues that are important in this  
20 case.

21 MR. JOHNSTON: If I may respond, Your Honor.

22 THE COURT: Yes.

23 MR. JOHNSTON: The defendant's understanding of his  
24 duty to the funds is relevant to the question of materiality,  
25 how he made the decisions, how he assessed the --



1 THE COURT: Wait, the defendant's understanding.

2 MR. JOHNSTON: I'm sorry, the witness's  
3 understanding of his duty to the funds he managed is relevant  
4 to how he approached costs and how he evaluated the  
5 representations that State Street made to him, so we need  
6 to --

7 THE COURT: What his state of mind is about, what  
8 his role is, that's fair. But it's about what his state of  
9 mind, so what did he do.

10 MR. JOHNSTON: That's exactly right.

11 (Bench conference concluded.)

12 THE COURT: Go ahead.

13 BY MR. JOHNSTON:

14 **Q.** My last question to you, Mr. Johnson, is how, if any,  
15 does your role as a fiduciary affect your approach to costs?

16 **A.** Costs is one of the things that I have a major influence  
17 over and try to control, so it's in the best interests of the  
18 beneficiaries that costs are kept as low as possible.

19 **Q.** What, if any, outside providers do you need to hire as a  
20 manager of the pension fund?

21 **A.** We need investment consultants, we need investment  
22 managers. We need actuaries, we need a whole array of  
23 advisors. We have a very small internal team, so we always  
24 look outside to get the best possible advice.

25 **Q.** Have you ever had an occasion to hire a transition

1 manager?

2 **A.** Yes.

3 **Q.** Why would you hire a transition manager?

4 **A.** We hire a transition manager when we are making changes  
5 within the pension fund and moving assets within portfolios  
6 and also changing investment strategy.

7 **Q.** Why wouldn't you have one of your normal asset managers  
8 do this?

9 **A.** Well, sometimes they could be conflicts of interests.  
10 And it's a very special skill, especially if more than two  
11 portfolios are involved.

12 **Q.** What role, if any, do you view the transition manager as  
13 playing towards the funds that are being transitioned?

14 **A.** The transition manager effectively arranges moving assets  
15 from one fund manager, one investment manager, to other  
16 investment managers, and also maintaining market exposure  
17 during that period of time, which is a key role.

18 **Q.** Why is it important to maintain market exposure?

19 **A.** Because we have to ensure that the strategy is being  
20 followed, that we wouldn't want to be out of the -- that we  
21 wouldn't want to be out of certain markets and, you know,  
22 experience any loss.

23 **Q.** What important -- what factors are important to you in  
24 making the decision about which transition manager to hire?

25 **A.** I suppose, chiefly, skill and expertise and cost.

1     **Q.** Directing your attention to the 2011 time period, did  
2     there come a time when Sainsbury's retained State Street as a  
3     transition manager?

4     **A.** Yes, there was.

5     **Q.** What was going on at the time in the fund that required a  
6     transition manager?

7     **A.** We were making some changes to the investment strategy  
8     and wanted to move assets from three of our investment  
9     managers to one of our investment managers. And we also  
10    wanted to change some of the indexes that we were -- we were  
11    investing against.

12    **Q.** What types of assets are we talking about?

13    **A.** We're talking about bonds, mainly corporate bonds, issued  
14    by US and UK companies.

15    **Q.** And that was the old portfolio you say?

16    **A.** That was the old portfolios, yeah. And we were moving  
17    those assets, transitioning those assets to a portfolio  
18    manager who was investing in UK government stock and UK  
19    derivatives.

20    **Q.** Why did you want to make this change?

21    **A.** We wanted to increase our liability hedging portfolio.  
22    We have a large portfolio which hedges the liability of  
23    the -- the liabilities of pension fund to protect it against  
24    movements in inflation and interest rates, reducing the, you  
25    know, long-term risk of the pension fund.

1     **Q.** That sounds a bit complicated. But is the short answer  
2     you want to reduce your risk?

3     **A.** We wanted to reduce the risk, yeah.

4     **Q.** What was the process that led you to select State Street?

5     **A.** We hired an independent advisor to do this, to search for  
6     the best transition manager. And they had that -- they had  
7     that single mandate.

8     **Q.** Who did you hire to help you select a transition manager?

9     **A.** We hired Aon Hewitt.

10    **Q.** Who is Aon Hewitt?

11    **A.** Aon Hewitt are a well-known investment advisory company  
12    and also an employee benefit consultants.

13    **Q.** Do you know what process they followed to find you a  
14    transition manager?

15    **A.** Well, they have fairly deep resources, and they -- they  
16    interviewed various transition managers and obviously knew  
17    the best ones.

18    **Q.** Do you know which transition managers they considered?

19    **A.** The short list was State Street and JP Morgan.

20    **Q.** Did there come a time when Aon Hewitt made a  
21    recommendation to you?

22    **A.** Yeah. They provided a -- quite a detailed report, showed  
23    why they had gone to the people that they -- that they  
24    selected, and suggested that we hire State Street.

25    **Q.** What were their reasons for recommending that you hire

1 State Street?

2 **A.** Well, one was cost. The other was that they felt their  
3 skill and expertise of the people at State Street was  
4 superior to that of JP Morgan.

5 **Q.** Did you personally look at the State Street proposal?

6 **A.** No, I didn't.

7 **Q.** What materials did you review before making this  
8 selection?

9 **A.** I reviewed the report from Aon Hewitt.

10 **Q.** So what was your understanding of who reviewed the  
11 original proposal from State Street?

12 **A.** My understanding was that Aon Hewitt reviewed it for us.  
13 Yeah.

14 **Q.** Had you ever used State Street before this 2011  
15 transition?

16 **A.** Yes, we had. Yeah.

17 **Q.** When had you used them before?

18 **A.** Well, we used them twice, I believe, for a big equity  
19 transition in 2009.

20 **Q.** Who, in particular at State Street, had you worked with  
21 on a transition?

22 **A.** The -- the employee at State Street who I -- was my  
23 opposite member was Rick Boomgaardt. I also worked with the  
24 relationship management team, as well.

25 **Q.** Who were those folks?

1     **A.** A guy called Chris Martin. I can't remember the other  
2     guy. I also worked with a guy called Rick Pestana, who  
3     worked with -- with Rick Boomgaardt.

4     **Q.** You testified that State Street had a competitive cost in  
5     their proposal; is that correct?

6     **A.** That's correct, yeah.

7     **Q.** How, if at all, did the implementation shortfall estimate  
8     factor into your decision?

9     **A.** Significantly. But the implementation shortfall provided  
10    by both banks was very similar.

11    **Q.** Are there any -- in your understanding, which parts of  
12    the implementation shortfall are hard to know in advance?

13    **A.** Well, it's difficult to know the how markets will react  
14    during the period of the transition. So the implementation  
15    shortfall is a rough estimate.

16    **Q.** Are there any parts of the implementation shortfall that  
17    you can know in advance?

18    **A.** Well, if a fixed fee has been charged, yes, you know that  
19    that is a known cost.

20    **Q.** Was a fixed fee proposed in this transition?

21    **A.** It was.

22    **Q.** Was that attractive to you?

23    **A.** It was attractive.

24    **Q.** Why so?

25    **A.** Why so? Well, it provided us with a known cost.

1 Q. And why is that something that is beneficial to you prior  
2 to transitioning assets?

3 A. Well, it meant that we knew what the costs were, to a  
4 certain extent, and we also weren't going to be charged a  
5 spread on the dealing.

6 Q. Prior to going with State Street, had you ever met Ross  
7 McLellan?

8 A. No.

9 Q. Had you ever seen the defendant before today?

10 A. No.

11 Q. When you selected State Street, did you have an  
12 understanding of who bore the market risk of the transition?

13 A. Well, I suppose we would -- we were bearing it, to a  
14 certain extent.

15 Q. And why would Sainsbury's pension fund be bearing the  
16 market risk of the transition?

17 A. They're our assets.

18 Q. And what, then, role would the transition manager be  
19 playing with respect to those assets?

20 A. They were just trading them as riskless principals.

21 Q. What was your understanding, if any, of who would benefit  
22 from a better-than-expected performance in the transition?

23 A. Yeah, we would, the pension fund.

24 Q. I'd like to show you a document that --

25 MR. JOHNSTON: For the witness only, Government

1 Exhibit 3.

2 MR. GOLDSTEIN: There's no objection, if the  
3 Government just wants to move it in.

4 MR. JOHNSTON: We move to admit Government Exhibit  
5 Number 3.

6 THE COURT: 3 is admitted.

7 (Exhibit No. 3 admitted into evidence.)

8 BY MR. JOHNSTON:

9 Q. Do you recognize this document, Mr. Johnson?

10 A. Yeah. It's the transition management agreement between  
11 State Street and the Sainsbury's transition fund.

12 Q. Let's take a look at page 18, please. Take a look at the  
13 signatures.

14 Do you recognize any of the signatures on this  
15 page?

16 A. The top one is my signature, and the one below, it was  
17 one of my former colleagues.

18 Q. And why is the date "July 9, 2009"?

19 A. Because that was the original contract that we had with  
20 State Street.

21 Q. Before the first time you hired them?

22 A. That's correct, yeah.

23 Q. What was your understanding of what this contract -- the  
24 role this contract would play in future transitions?

25 A. The contract is a base document.



1     **Q.** And would there be anything -- what, if anything, would  
2     come after this?

3     **A.** Yes. There's a, what we call a transition -- a  
4     transition notice, which is appended to the contract, which  
5     details the work to be done and the costs and fees, you know,  
6     that would be charged.

7     **Q.** Is there a new one for every transition, or is there only  
8     one?

9     **A.** There's a new one for every transition, yeah.

10    **Q.** Let's take a look at page 7, please. Direct your  
11    attention to the top paragraph.

12                 If we could -- I want to read to you, "The client  
13    authorizes and directs that such broker-dealer associates of  
14    State Street may accept compensation in lieu of commission in  
15    the form of a spread between the sale or purchase price of  
16    the fixed income security sold or bought by the fund, subject  
17    to a transition notice, and the purchase or sale price of the  
18    fixed income security, paid or received as applicable by the  
19    third-party market counterparties on the other side of the  
20    transaction."

21                 What, if anything, do you understand this phrase to  
22    mean?

23    **A.** Well, exactly what it says, compensation in lieu of a  
24    commission. So a fee could be charged instead of that.

25    **Q.** Okay. And let's take a look further up, where it says,

1 "The client also hereby authorizes and directs State Street,"  
2 and then, "to place all fixed income securities orders  
3 through broker-dealer associates of State Street, in a manner  
4 whereby such associates would act as the riskless principal  
5 agency counterparty between a fund subject to a transition  
6 notice and the third-market" -- "third-party market  
7 counterparties on the other side of the transaction."

8 What's your understanding of the term "riskless  
9 principal agency counterparty"?

10 **A.** That means there's no spread. There's no difference  
11 between the buy cost and the sell cost.

12 **Q.** And what's your understanding of what the term "agency"  
13 here means?

14 **A.** Agency means that they're working for us and in our best  
15 interests.

16 **Q.** Who would be working for you in your best interest?

17 **A.** State Street would be, yeah.

18 **Q.** And then finally, at the bottom, where it says, "The  
19 amount of compensation in the form of a spread, permitted to  
20 be received by such broker-dealer associates and any such  
21 riskless principal transaction involving a fixed income  
22 security, shall be specifically identified in the transition  
23 notice."

24 What's your understanding of what that phrase  
25 means?

1       **A.** That means that if any -- all the compensation, any  
2       compensation is actually detailed in the transition notice.

3               MR. JOHNSTON: You can take this down, Erin.

4       BY MR. JOHNSTON:

5       **Q.** Did you have an understanding, in 2011, whether State  
6       Street would be acting as an agent or principal for your  
7       transition?

8       **A.** They would be acting as an agent.

9       **Q.** And what was that understanding based on?

10      **A.** Well, the transition notice that we signed.

11      **Q.** Had you seen any representations, one way or the other,  
12      in the proposals or reports that Aon Hewitt had sent to you?

13      **A.** Yes. Yeah.

14      **Q.** And what was your understanding from reading --

15      **A.** The understanding is they'd be doing this work for us for  
16      a fixed cost, and there wouldn't be any commissions payable.

17      **Q.** Let's take a look at a document that's already been  
18      admitted into evidence, Exhibit 109-1. Let's just zoom in at  
19      the top, please.

20              Do you recognize this document, Mr. Johnson?

21      **A.** Yes, I do.

22      **Q.** What is it?

23      **A.** That is the transition notice, which relates to the  
24      transition in question, which is appended to the contract.

25      **Q.** Let's take a look at page 2, please. And can we first

1 zoom in on the signatures.

2 Do you recognize any of the names here?

3 **A.** Yes. The first one is mine. And the second one is  
4 Edward Pennings, who is part of the transition team at State  
5 Street in London.

6 **Q.** All right. If we can zoom further up on the transition  
7 fee component.

8 Mr. Johnson, what was your understanding as to what  
9 this provision in the transition notice meant?

10 **A.** That meant we'd be paying State Street a fixed fee of  
11 350,000 pounds sterling for this job.

12 **Q.** Was that number going to be in lieu of commission or in  
13 addition to commission?

14 **A.** In lieu of.

15 **Q.** What -- what was your -- what, if anything, made you  
16 believe that 350,000 was the sole amount you'd be paying for  
17 this transition?

18 **A.** Well, the -- as it states it in the contract, yeah, that  
19 is what was represented to us by Aon Hewitt, when they went  
20 out to search for a transition manager.

21 **Q.** And your understanding at the time was that Aon Hewitt  
22 had reviewed State Street's proposal?

23 **A.** They had. I mean, at the time -- it's a very competitive  
24 business, so both JP Morgan and State Street were prepared to  
25 do this work for a fixed fee.

1     **Q.** At any point, did you authorize someone at State Street  
2     to charge you commissions or fees in addition to this  
3     350,000 pounds?

4     **A.** We did not.

5     **Q.** Did the transition occur?

6     **A.** Yes.

7     **Q.** Were you initially satisfied with the result?

8     **A.** We were very satisfied with the result initially, yes.

9     **Q.** And why was that?

10    **A.** It came -- the cost of it came in below the estimated  
11    amount, you know, the shortfall amount, as we call it.

12    **Q.** And if you recall, what, if anything, had happened in the  
13    market that went in your favor?

14    **A.** I don't recall. But I just know -- we seemed to hit a  
15    sweet spot.

16    **Q.** I want to show you a document, for the witness only,  
17    Exhibit 137.

18           MR. JOHNSTON: If we can zoom in at the top,  
19    please, Erin.

20    BY MR. JOHNSTON:

21    **Q.** Do you recognize this document, Mr. Johnson?

22    **A.** Yes, I do. It's the invoice that State Street sent us  
23    for this job.

24           MR. JOHNSTON: We move to admit Exhibit 137.

25           MR. GOLDSTEIN: No objection.

1 THE COURT: Admitted.

2 (Exhibit No. 137 admitted into evidence.)

3 MR. JOHNSTON: Publish to the jury, please. If we  
4 can zoom again at the top, please.

5 BY MR. JOHNSTON:

6 Q. Who is this bill addressed to?

7 A. It's addressed to me at Sainsbury's.

8 Q. And what's the amount of the bill?

9 A. 350,000 pounds sterling.

10 Q. Was this invoice paid?

11 A. Yes.

12 Q. What was your -- when you paid this invoice, what was  
13 your understanding as to what this fee covered?

14 A. I thought that covered all the work that State Street had  
15 undertaken for us in respect to this transition of assets.

16 Q. At some point did you come to learn that Sainsbury's had  
17 been charged additional?

18 A. We did, yes.

19 Q. And approximately how much in additional fees had you  
20 been charged on the bond transition?

21 A. Well, we were charged additional commissions of  
22 \$1.1 million.

23 Q. Had you authorized anyone to make those charges?

24 A. We had not.

25 Q. What was your reaction when you found that out?

1     **A.**   Shocked and stunned.

2     **Q.**   To what extent would knowing that you would have been  
3     charged 1.1 million have affected your decision to hire State  
4     Street?

5     **A.**   We wouldn't have hired them. We would have used JP  
6     Morgan.

7     **Q.**   How, if at all, did this extra cost affect the  
8     implementation shortfall?

9     **A.**   Significantly. It was a big chunk of it.

10    **Q.**   How has this experience -- or did this experience affect  
11    your business relationship with State Street?

12    **A.**   It -- it ended it. It was a very large business  
13    relationship that we had with State Street. They ran a  
14    very -- they run a 1.5 billion sterling -- sterling equity  
15    portfolio, which we closed. We were about to appoint them as  
16    our custodian bank. We had signed off on that. That ended  
17    and we vowed never to work with them again.

18    **Q.**   Are you referring to business units other than State  
19    Street Transition Management?

20    **A.**   Yeah, all State Street. We won't touch them.

21    **Q.**   Even business units that had nothing to do with the  
22    transition team.

23    **A.**   In London, State Street were all in one building, so we  
24    just considered them to be the same entity.

25    **Q.**   What, if any, revenues did that mean you no longer paid

1 State Street?

2 **A.** Well, we ceased to pay them the management fee for the UK  
3 equity portfolio. They also ran some currency hedging for  
4 us. Yeah, that was pretty much it at the time.

5 **Q.** What were those -- what's the approximate fees you were  
6 paying for those custodian business?

7 **A.** Oh, probably about one and a half million sterling,  
8 probably about a million sterling a year from the equity  
9 portfolio, which was all of the pension funds' equities.

10 **Q.** Prior to this experience with State Street, what was --  
11 how was the business relationship with them?

12 **A.** It was very good. We had a long standing relationship  
13 with them. We had a previous portfolio, which we had  
14 actually moved to another manager, just because we thought  
15 the other manager was better. But we were -- as I say, we  
16 were just about to appoint them as the custodian bank. They  
17 would have been the custodian of all the pension funds  
18 assets.

19 **Q.** Did you trust them before this 2011 transition?

20 **A.** Yeah, we did, yeah.

21 **Q.** And what happened after the transition?

22 **A.** Well, it's -- there was a complete loss of trust and I  
23 was instructed to end all ties with them.

24 **Q.** Who gave you that instruction?

25 **A.** The trustees of the pension fund.



1 Q. Has anything like this happened in your 30 years?

2 THE COURT: Sustained.

3 MR. GOLDSTEIN: Objection.

4 THE COURT: Sustained.

5 BY MR. JOHNSTON:

6 Q. Had you ever been deliberately overcharged before?

7 MR. GOLDSTEIN: Objection.

8 Q. -- to your knowledge?

9 MR. GOLDSTEIN: Objection.

10 THE COURT: Sustained. I'm not sure that's  
11 relevant.

12 Because this case, ladies and gentlemen, is about  
13 these charges in this case and the conduct here.

14 MR. JOHNSTON: Your Honor, it is relevant to his  
15 state of mind and how he viewed the charges and whether they  
16 were important to him.

17 THE COURT: And whether they were what?

18 MR. JOHNSTON: Important and significant to his  
19 fund.

20 THE COURT: Well, didn't he already testify about  
21 that?

22 MR. JOHNSTON: Right, but the Government is  
23 entitled to elicit some additional context for why they were  
24 important and whether --

25 THE COURT: You can ask him why these charges are

1 important to him, but -- that's relevant to the case.

2 BY MR. JOHNSTON:

3 **Q.** The 1.1 million in overcharges that you testified to, who  
4 ultimately ended up paying that fee?

5 **A.** State Street. State Street reimbursed us.

6 MR. GOLDSTEIN: Objection.

7 BY MR. JOHNSTON:

8 **Q.** I'm sorry. That wasn't a -- sorry. Withdrawn.

9 MR. WEINBERG: May I reserve a motion, Your Honor?

10 THE COURT: You can reserve a motion, sure.

11 BY MR. JOHNSTON:

12 **Q.** Any overcharges to the pension fund, out of whose pocket  
13 does that ultimately come?

14 **A.** It comes out of the pension fund.

15 MR. JOHNSTON: Thank you, no further questions.

16 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT**

17 BY MR. GOLDSTEIN:

18 **Q.** Mr. Johnson, you testified you never met this man before,  
19 correct?

20 **A.** That's correct, yeah.

21 **Q.** Taking you back to 2010, 2011, you didn't have a single  
22 e-mail with Mr. McLellan, correct?

23 **A.** That's correct.

24 **Q.** Not a single telephone call with him, correct?

25 **A.** I believe so.

1       **Q.** Mr. McLellan never made any representations or promises  
2       or assurances to you, correct?

3       **A.** Correct.

4       **Q.** Back in 2010 or 2011, this man, simply to you, didn't  
5       exist in your world, correct?

6       **A.** I was aware of his name.

7       **Q.** But you didn't know him and he didn't make any  
8       representations to you, correct?

9       **A.** No, that's correct.

10               MR. GOLDSTEIN: And Max, can we have Exhibit 3,  
11       please?

12       BY MR. GOLDSTEIN:

13       **Q.** Mr. Johnson --

14       **A.** Johnson.

15       **Q.** Johnson. Mr. Johnston asked you some questions about the  
16       transition management agreement that was executed between  
17       Sainsbury's and State Street, correct?

18       **A.** Yeah.

19       **Q.** And this is the contract that governed your relationship  
20       with State Street, in terms of the transition management  
21       business, correct?

22       **A.** Correct.

23       **Q.** And this is what you would call a bilateral agreement,  
24       meaning there are two parties to this particular agreement,  
25       correct?

1       **A.** Yeah.

2               MR. GOLDSTEIN: And Max, if we could have the  
3 second page, please. The top blown up, please. Thank you.

4               Actually, a little bit higher than that, Max. The  
5 whole top. The header up top, Max. Thank you.

6 BY MR. GOLDSTEIN:

7       **Q.** On the top right corner, it says "transition management  
8 agreement, 12 March 2009 version," correct?

9       **A.** Yeah.

10       **Q.** All right. And that was not something generated by  
11 Sainsbury's, right? Meaning this is an agreement that was  
12 generated by State Street. It's a template; is that correct?

13       **A.** I believe so, yeah.

14       **Q.** Okay. And if you go down, the date of this particular  
15 agreement is July of 2009, correct?

16       **A.** Yup.

17       **Q.** All right. And so this is a year or so more than the  
18 transition Mr. Johnston just asked you about, correct?

19       **A.** Yes.

20       **Q.** All right. And if we look at the parties, the  
21 organizations that are a party to this contract, the first  
22 one is Sainsbury's, correct?

23       **A.** No, it's State Street.

24       **Q.** Well, it's not with State Street. It's actually not  
25 State Street, right? It's State Street Bank Europe Limited,

1 correct?

2 **A.** Yes.

3 **Q.** And that's who you entered a contract into, was that  
4 particular entity, State Street Bank Europe Limited, correct?

5 **A.** Yes.

6 **Q.** And if you look below, it says it's an entity  
7 incorporated under the laws of England, right?

8 **A.** Yeah.

9 **Q.** And it says that "for the balance of this agreement,  
10 references to the word State Street" --

11 MR. GOLDSTEIN: Max, if you could highlight that,  
12 please.

13 BY MR. GOLDSTEIN:

14 **Q.** "Would refer back to what I will refer to as SSBEL or  
15 BEL, State Street Bank Europe Limited."

16 Do you see that?

17 **A.** Yeah.

18 **Q.** And the other party to this contract is Sainsbury's,  
19 right?

20 **A.** Yeah.

21 **Q.** And you, when you negotiated this agreement, you signed  
22 this agreement, correct?

23 **A.** Yes.

24 **Q.** And you represented the interests of Sainsbury's, right?

25 **A.** Yes.

1 Q. Testified it's a massive pension fund, right?

2 A. It's big.

3 Q. Not just big. I mean, there's upwards of \$7-plus billion  
4 as part of this fund, right?

5 A. Yeah, more.

6 Q. More now, right?

7 A. Yeah.

8 Q. Okay. And when you were entering into this agreement  
9 with State Street Bank Europe Limited, your role in  
10 negotiating this contract was to protect the interests of  
11 Sainsbury's, right?

12 A. Yes.

13 Q. You were the chief investment officer, correct?

14 A. Yes.

15 Q. And you had been in the industry for 20 or 30 plus years,  
16 correct?

17 A. Yup.

18 Q. And I think your official title was investment  
19 controller, right?

20 A. It was then, yeah.

21 Q. Something that came to a chief investment officer, right?

22 A. Yes.

23 Q. You had a job to oversee the investments and the  
24 execution of the pension funds, right?

25 A. Yes.

1     **Q.** Your job, as you testify, was to protect the  
2 beneficiaries of that fund, right?

3     **A.** Yeah.

4     **Q.** And your job was to select the right asset manager who  
5 was going to manage the assets, right?

6     **A.** Yes.

7     **Q.** And in this particular context, it was your  
8 responsibility to select the right transition manager, right?

9     **A.** Yes.

10    **Q.** Wasn't Mr. McLellan's role and responsibility to  
11 negotiate this contract on behalf of Sainsbury's, was it?

12           MR. JOHNSTON: Objection. The witness has said  
13 that he doesn't know the defendant. So I don't know how he  
14 can possibly testify as to --

15           THE COURT: Overruled. I think he can know who  
16 negotiates on behalf of Sainsbury's, based on his testimony.  
17 BY MR. GOLDSTEIN:

18    **Q.** Was it Mr. McLellan's role to negotiate this contract, to  
19 the extent he was involved, looking out for the people of  
20 Sainsbury's, right? That was your responsibility, right?

21    **A.** I don't understand what you're trying to say.

22    **Q.** Meaning you represented the interest of Sainsbury's in  
23 the formation of this foundational agreement between  
24 Sainsbury's --

25    **A.** Yeah.

1     **Q.**   -- and State Street Bank Europe Limited, right?

2     **A.**   Yeah.

3     **Q.**   Okay. And I presume you're paid very well to perform  
4     your role at Sainsbury's?

5     **A.**   Reasonably.

6     **Q.**   And what does reasonably mean, back in 2009?

7     **A.**   You want to know what my salary was?

8     **Q.**   I do.

9     **A.**   I suppose with bonuses it was probably about  
10    100,000 pounds per year.

11    **Q.**   Okay. And Sainsbury's has, back at that time -- you have  
12    your own legal department?

13    **A.**   We do, but we use specialist outside lawyers for any  
14    pension fund investment business. So we don't use our  
15    in-house team.

16    **Q.**   And what about in terms of negotiating contracts? Do you  
17    have in-house lawyers to help you when you negotiate  
18    transition management agreements?

19    **A.**   No, we use outside lawyers.

20    **Q.**   So you have the assets and the wherewithal and the  
21    resources to hire outside lawyers to negotiate these  
22    foundational agreements, whether they're with State Street  
23    Bank Europe Limited, or some other transition management  
24    principal?

25    **A.**   We use outside lawyers to negotiate all agreements for



1 us.

2 **Q.** Okay. And you would also have available to you and, in  
3 fact, utilized here, a consultant to help you in terms of  
4 selecting the right transition manager, right?

5 **A.** Correct.

6 **Q.** Now, on the other side of this coin, you have State  
7 Street Bank Europe Limited, right?

8 **A.** Yes.

9 **Q.** And they -- that's the entity, as opposed to State Street  
10 Global Markets, or State Street Global Markets International,  
11 who's the signatory to this foundational agreement with  
12 Sainsbury's, correct?

13 **A.** Sorry, can you say that again?

14 **Q.** The party who signed this agreement with you is with  
15 State Street Bank Europe Limited, not another entity, such as  
16 State Street Global Markets?

17 **A.** Yes, that's right.

18 **Q.** Or State Street Global Markets International, right?

19 **A.** Yeah.

20 MR. GOLDSTEIN: Okay. And if you go down to the  
21 whereas line, Max.

22 BY MR. GOLDSTEIN:

23 **Q.** The client, which is Sainsbury's, from time to time, will  
24 appoint State Street as transition manager. Do you see that?

25 **A.** Yeah, from time to time.

1     **Q.** Right. You're not appointing -- and again, a reference  
2     to State Street is not State Street, writ large, it's the  
3     State Street defined in the contract, which is BEL, Bank  
4     Europe Limited, right?

5     **A.** Yeah.

6     **Q.** And they're appointed as a transition manager, not  
7     appointed as a broker-dealer, right?

8     **A.** Right.

9     **Q.** And then if you go down, the next section is  
10    interpretations and definitions. Do you see that?

11    **A.** Yeah. If you blow it up, I will.

12    **Q.** Sure. And the first paragraph, interpretations and  
13    definitions, sets out various key terms that will appear  
14    later on in this contract, right?

15    **A.** Right.

16    **Q.** And the very first one talks about capitalized terms and  
17    refers to FSA rules on two occasions, right?

18    **A.** Yes.

19    **Q.** And the FSA was the regulatory agency that governs the  
20    securities industry in the United Kingdom, right?

21    **A.** Was then.

22    **Q.** It's now the FCA, right?

23    **A.** Correct.

24    **Q.** And you don't see any reference to the Securities  
25    Exchange Commission in this first paragraph, right?

1     **A.** Can't see it, no.

2     **Q.** Right, because Sainsbury's is a UK-domiciled entity,  
3 right?

4     **A.** Yes.

5     **Q.** BEL, State Street Bank Europe Limited, is also a  
6 UK-domiciled entity, right?

7     **A.** Yes.

8     **Q.** And so predictably, naturally references here are to the  
9 FSA, which is now the FCA, right?

10    **A.** Correct.

11    **Q.** All right. And then if you go down, the next section is  
12 definitions. Do you see that?

13    **A.** Yes.

14    **Q.** All right. And if we go to the next page, the second  
15 paragraph and third paragraph defines, for each of these  
16 parties, the term "associate and broker-dealer," right?

17    **A.** Yes.

18    **Q.** And so it reads, "Associate means the ultimate holding  
19 company of State Street."

20                 Do you see that?

21    **A.** Yes.

22    **Q.** And what that means is that associate -- you're talking  
23 about an associate of State Street Bank Europe Limited,  
24 right?

25    **A.** Yes.

1     **Q.** And it's defining for you and anyone else who's relying  
2     on this contract, what constitutes or consists of an  
3     associate, right?

4     **A.** Yeah.

5     **Q.** And it refers to the ultimate holding company of State  
6     Street, any direct or indirect wholly owned subsidiary of  
7     that holding company, correct?

8     **A.** Yeah.

9     **Q.** And then it goes on to state such entities include, but  
10    are not limited to State Street Global Markets International  
11    Limited. Do you see that?

12    **A.** Yeah.

13    **Q.** State Street Global Markets LLC, right?

14    **A.** Yes.

15    **Q.** And State Street Bank and Trust Company, right?

16    **A.** Yeah.

17    **Q.** And so right here, at basically the outset of the  
18    contract, it's giving clear notice that there are other  
19    "entities, affiliates or associates of the company to which  
20    you have entered into a transition management agreement,"  
21    correct?

22    **A.** Yes.

23    **Q.** The next paragraph, broker-dealer, means "a broker and/or  
24    dealer and/or market-maker, as the case may be, which is in  
25    the business of effecting or entering into securities,

1 futures and/or foreign exchange commissions, benefitting from  
2 a commission, fee, markup or markdown, as the case may be."

3 Do you see that?

4 **A.** I see that, yeah.

5 **Q.** And so you've been in this industry for 30-plus years  
6 now, right?

7 **A.** Uh-huh.

8 **Q.** You know what a broker-dealer is, right?

9 **A.** Yes.

10 **Q.** And so a broker-dealer is an entity that performs  
11 execution of trades, right?

12 **A.** Yeah.

13 **Q.** And so when you entered into a contract with State Street  
14 Bank Europe Limited, you knew, it's clearly provided here,  
15 that State Street Bank Europe Limited was not the  
16 broker-dealer, or is not a broker-dealer, right?

17 **A.** I can't say I'm clear or not -- I'm not sure.

18 **Q.** Well, do you see anywhere in here that it refers to State  
19 Street Bank Europe Limited as being a broker-dealer?

20 **A.** That State Street Bank is a broker-dealer?

21 **Q.** We'll get to this in a subsequent section. The point is,  
22 you're on clear notice, as part of this contract, that a  
23 broker-dealer benefits from a commissioned fee markup or  
24 markdown, as the case may be, correct?

25 **MR. JOHNSTON:** Objection.

1 THE COURT: What's the objection?

2 MR. JOHNSTON: He's telling the witness that he's  
3 on notice. He can testify to what his understanding is.

4 THE COURT: Overruled.

5 You can answer the question.

6 BY MR. GOLDSTEIN:

7 Q. The contract reads "broker-dealer," okay. "In the  
8 business of effecting or entering into securities benefitting  
9 from a commission fee markup or markdown, as the case may  
10 be."

11 It's the definition provided in the foundational  
12 agreement between you and State Street Bank Europe Limited as  
13 to what the parties mean when the words "broker-dealer"  
14 appears in the subsequent provisions of the transition  
15 management agreement, correct?

16 MR. JOHNSTON: Objection. Form. He didn't ask  
17 what the witnesses' understanding was, or what the terms  
18 meant. He just asked a -- he's just testifying about what  
19 the terms mean.

20 THE COURT: Well, he asked him, isn't that what it  
21 means?

22 MR. JOHNSTON: He didn't.

23 BY MR. GOLDSTEIN:

24 Q. Correct, Mr. Johnston?

25 THE COURT: Why don't you answer the question?

1                   Why don't you repeat the question.

2       BY MR. GOLDSTEIN:

3       **Q.**   The contract defines broker-dealer as --

4       **A.**   Yeah, the contract defines broker-dealer for sure, yeah.

5       **Q.**   And it defines it as "someone in the business of  
6       effecting or entering into securities, benefitting from a  
7       commission fee markup or markdown, as the case may be."

8                   Correct?

9       **A.**   Yeah, that's what it says.

10                  THE COURT: All right. We'll break here.

11                  So ladies and gentlemen, I'll remind you. We'll  
12       break now for lunch from 1:00 to 2:00, but we're going to  
13       resume at 2:00. So just a couple little instructions. First  
14       of all, don't discuss the case among yourselves or with  
15       anyone else. And if you have a moment, don't do any  
16       independent research and more practically, with respect to  
17       lunch, you're free -- if you brought lunch to eat in the jury  
18       room, you're free to go downstairs, wear your jury tags. You  
19       can go to the cafeteria in the courthouse. That's probably  
20       -- free culinary advice, probably the least expensive place  
21       in this neighborhood to eat. And you're welcome to eat  
22       there, but I don't get any fee if you do or you don't. So  
23       you can make your own decisions.

24                  But you can go there -- the advantage of going  
25       there, is it will give you -- be quicker in terms of getting

1 back and the like. You won't have to get in and out of the  
2 building. But there are many places in the neighborhood if  
3 you wish to just walk around or go somewhere else. You can  
4 bring your lunch back there, you can eat somewhere else. We  
5 just ask you to be back in time to resume at 2:00 and we'll  
6 resume at 2 o'clock.

7 Thank you very much for your attention, all rise  
8 for the jury.

9 Oh, wait. Obviously, you may run into people from  
10 the case in the cafeteria or walking around at lunch and  
11 don't talk to them and they won't talk to you and take no  
12 offense at that. Thanks.

13 (The jury exits the courtroom.)

14 THE COURT: All right. We'll resume at 2 o'clock.  
15 See you then. Thank you.

16 (Court in recess at 1:02 p.m.  
17 and reconvened at 1:59 p.m.)

18 THE DEPUTY CLERK: The McLellan matter is back in  
19 session.

20 THE COURT: Please be seated.

21 Everybody ready? Mr. Goldstein, your audience  
22 seems to have disappeared.

23 MR. GOLDSTEIN: Right.

24 THE COURT: The audience seems to have disappeared.

25 MR. GOLDSTEIN: I know where I stand.



1 THE COURT: You do. All right.

2 Go get the jury. If they need a minute, then  
3 that's fine, but if they're ready, we'll take them now.

4 THE DEPUTY CLERK: Okay.

5 THE COURT: Is the next witness, direct, same  
6 duration as this witness about?

7 MR. JOHNSTON: Yeah, approximately the same.

8 THE COURT: What happened?

9 MR. WEINBERG: After the First Circuit upholds the  
10 dismissal, getting back the passport --

11 THE COURT: Yes.

12 MR. WEINBERG: Those experiences don't happen every  
13 day.

14 THE COURT: I saw that decision. That was a speedy  
15 trial issue, right?

16 MR. WEINBERG: Yeah. Yeah.

17 (The jury enters the courtroom.)

18 THE COURT: Go ahead.

19 BY MR. GOLDSTEIN:

20 **Q.** Mr. Johnson, we left off, we were talking about the  
21 definition of broker-dealer. Do you recall that line of  
22 questioning?

23 **A.** Yes.

24 **Q.** If you go to the contact, where it defines broker-dealer,  
25 it talks about -- it says, "in the business of effecting of

1 entering into securities, benefitting from a commissioned  
2 fee, markup or markdown, as the case may be."

3 Do you see that language?

4 **A.** Yes.

5 **Q.** All right. And when they refer to a markup or markdown,  
6 that generally is a reference to pricing on bond executions,  
7 correct?

8 **A.** Correct.

9 **Q.** And so what that means is that if a broker-dealer buys a  
10 bond, let's say \$100, it may mark up that bond when it passes  
11 it on to \$100.01, and that is referred to as a markup,  
12 correct?

13 **MR. JOHNSTON:** Objection. Could he ask the witness  
14 what his understanding is of these terms?

15 **THE COURT:** You can add to that. That's your  
16 understanding?

17 **BY MR. GOLDSTEIN:**

18 **Q.** And let me just preface my question, is that your  
19 understanding?

20 **A.** Yeah.

21 **Q.** Okay. And the difference between the --

22 **THE COURT:** I guess, just so we're clear. So all  
23 these questions, with respect to this, are his understanding.  
24 It's not -- it's not a legal interpretation of the contract.  
25 It's his understanding of his reading of the contract or his

1 understanding, generally. That's what --

2 MR. GOLDSTEIN: Thank you.

3 BY MR. GOLDSTEIN:

4 Q. And you've worked in this industry for 30 years, right?

5 A. Yes.

6 Q. And so the difference between the execution price of 100  
7 and the markup to 100.01, for instance, is referred to in the  
8 industry as the spread, correct?

9 A. The difference between the buy and the sale price.

10 Q. Right, is referred to as the spread, right?

11 A. Yes.

12 Q. Okay. Now, underneath -- after broker-dealer, there are  
13 other terms that are defined in this contract, correct?

14 A. Yes.

15 Q. And you see there are references to the FSA, FSA rules,  
16 FSMA, and MIFID, right?

17 A. Yeah.

18 Q. And again, those are references to UK regulatory agencies  
19 or statutes and regulations, right?

20 A. At that time, yes.

21 Q. Right. And you don't see any reference to Securities and  
22 Exchange Commission, or United States regulations, right?

23 A. It's a UK contract.

24 Q. Right. And if we move on to the next page, at the top,  
25 there's a section entitled "Appointment of State Street."

1 MR. GOLDSTEIN: Which I'll ask Max to blow up the  
2 entire paragraph, Max. Just that top paragraph is fine for  
3 now, Max.

4 BY MR. GOLDSTEIN:

5 Q. It reads, if you can follow along, "The client may, from  
6 time to time, appoint State Street as a transition manager  
7 for the liquidation or restructuring of certain portfolios."

8 Right?

9 A. Yes.

10 Q. Once again, just making it clear that State Street and  
11 State Street in this context means State Street Bank Europe  
12 Limited, right?

13 A. Yes.

14 Q. That they're being appointed as a transition manager,  
15 right?

16 A. Yes.

17 Q. And if we --

18 MR. GOLDSTEIN: If we go down to paragraph 2.3.,  
19 Max.

20 BY MR. GOLDSTEIN:

21 Q. It talks about Sainsbury's being categorized as a  
22 professional client. Do you see that?

23 A. I do.

24 Q. And it reads, "State Street has categorized the client as  
25 a professional client. This replaces any previous

1 categorization."

2 Right?

3 **A.** Yes.

4 **Q.** And then it moves on to say that "Professional clients  
5 are considered to possess the experience, knowledge, and  
6 expertise to make their own investment decisions and assess  
7 the risks inherent in their decisions."

8 Right?

9 **A.** Yes.

10 **Q.** This just means that Sainsbury's is in the profession of  
11 securities industry, correct? Is that your understanding of  
12 what professional client means?

13 **A.** Yes.

14 **Q.** Okay. And if we move on to the next page, terms of  
15 assignment.

16 MR. GOLDSTEIN: If you can just blow up that  
17 first -- the bottom two paragraph, under "terms of  
18 assignment."

19 BY MR. GOLDSTEIN:

20 **Q.** Again, it talks about State Street, which, in this  
21 context, is SSBEL, right?

22 **A.** Yes.

23 **Q.** "In its capacity as transition manager" -- I'm reading  
24 that correctly, right?

25 **A.** Yeah.

1       **Q.** "Under this agreement, shall provide the client with  
2       services for liquidating or restructuring a fund in a  
3       cost-efficient and flexible manner."

4               Right?

5       **A.** Yes.

6       **Q.** It doesn't say "as cheaply as possible," right? It  
7       certainly doesn't say for free, right?

8       **A.** It does say "cost-efficient."

9       **Q.** And flexible, right?

10      **A.** Yeah.

11      **Q.** And then the next paragraph, towards the bottom of the  
12      page, as part of another paragraph, it reads that "State  
13      Street shall be expected to act only in the capacity of a  
14      transition manager under the agreement."

15              Do you see that? It's the second to last line,  
16      beginning with State Street?

17      **A.** Yeah, I saw that.

18      **Q.** "And in such capacity to exercise discretion only on  
19      price and timing with respect to the trading."

20              Right?

21      **A.** Yes.

22      **Q.** And so again, it's just reinforcing the concept that  
23      State Bank Europe Limited has been appointed in the capacity  
24      as a transition manager, right?

25      **A.** Yes.

1     **Q.** All right. Now, if we go down to the next page, at the  
2     bottom, it gets -- there's a provision that's entitled  
3     "Securities Market Trading."

4             Do you see that?

5     **A.** Yes.

6     **Q.** All right. It reads -- and this paragraph in particular  
7     concerns equity transactions, as opposed to fixed income  
8     transactions, correct?

9     **A.** Yes.

10    **Q.** All right. And it reads, "The client hereby authorizes  
11    and directs State Street to place all equity securities  
12    orders on behalf of the fund, that are not executed in a  
13    cross trade, as described above, through its broker-dealer  
14    associates."

15            Do you see that?

16    **A.** Yes.

17    **Q.** And so earlier, when I asked you questions about whether  
18    or not State Street Bank Europe Limited was the broker-dealer  
19    in the context of this transition management agreement, this  
20    particular paragraph makes it clear, does it not, that  
21    Sainsbury's is authorizing and directing SSBEL to execute its  
22    orders through its broker-dealer associates, do you see that?

23    **A.** Yeah, but this is in respect to equities and we were  
24    trading bonds.

25    **Q.** Correct.

1 MR. JOHNSTON: Objecting, he's not asking what his  
2 understanding is. He's testifying as to what is clear --  
3 what parts are clear in the contract.

4 THE COURT: All of these questions are as to what  
5 his understanding is and it's just he's asking him on cross  
6 whether -- he's asking is it clear that your understanding  
7 was this.

8 MR. JOHNSTON: We just think the record should be  
9 clear that he should actually have to say those words, is it  
10 your understanding that this phrase means this.

11 MR. GOLDSTEIN: How about this, Your Honor. I will  
12 stipulate, to the extent I'm asking him questions about  
13 the --

14 THE COURT: All the questions as I've already  
15 explained to the jury, with respect to this contract, are not  
16 a legal interpretation of this contract -- as far as -- are  
17 you aware -- I don't think anybody has testified to a legal  
18 interpretation of any --

19 MR. FRANK: We could be explicit, Your Honor, at  
20 sidebar. I just want to be very clear about what the concern  
21 is. It's a form concern and I'm not sure that it's clear.

22 THE COURT: It's certainly not clear, because I'm  
23 not perceiving -- there's no -- I don't think we need a  
24 sidebar.

25 There's no -- this witness is not interpreting the



1 contract. He's testifying when he's being asked about the  
2 contract, either is this what the contract says, or just  
3 these are the words in the contract, or is this what --  
4 implicit in the questions, is this your understanding of the  
5 contract. Because he's not being asked -- I don't understand  
6 Mr. Goldstein is seeking to ask and it would be objectionable  
7 if he did, what is a legal interpretation of the contract.  
8 That's not for this witness to give. The law is for --  
9 that's not --

10 So you can ask him what your understanding is. He  
11 can ask you these questions.

12 And he's asking you, sir, for your understanding of  
13 what these provisions mean and you can tell him whatever the  
14 proper answer, based on what your understanding is.

15 MR. GOLDSTEIN: Thank you, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. GOLDSTEIN:

18 **Q.** Mr. Johnson, the contract clearly states, black letters  
19 on white paper, it reads, "The client hereby authorizes and  
20 directs State Street to place all equity securities orders  
21 through its broker-dealers associates."

22 Did I read the contract accurately? I cut out a  
23 few words in between.

24 **A.** You did, but we weren't trading equities.

25 **Q.** Completely understood. It's in the contract, though,

1 right?

2 **A.** Sure, it's in the contract. It's there in black and  
3 white as you've just said, yeah.

4 **Q.** Right and what it does is it combines two terms that were  
5 separately defined earlier on. Meaning it combines  
6 "broker-dealer" with "associates," right?

7 **A.** Yeah.

8 **Q.** Right?

9 **A.** Yeah.

10 **Q.** And so what it says is that these equity orders will be  
11 executed through SSBEL's broker-dealer associates, right?

12 **A.** Equity orders, yeah.

13 **Q.** And then it goes on to provide, or to state, again, black  
14 letters on white paper?

15 THE COURT: So we're clear, what your answers are,  
16 either if he asks you is this what it just says, either it  
17 says that or it doesn't say that, or he's asking you, is that  
18 what you understand it to mean?

19 THE WITNESS: Right.

20 BY MR. GOLDSTEIN:

21 **Q.** And it provides a few examples of who those broker-dealer  
22 associates are, right?

23 **A.** Yes.

24 **Q.** And it specifically refers to State Street Global Markets  
25 LLC, right?

1       **A.** It does.

2       **Q.** And State Street Global Markets International Limited,  
3 right?

4       **A.** Yes.

5       **Q.** And so was it your understanding, based on this  
6 paragraph, that those two entities were broker-dealer  
7 associates of State Street Bank Europe Limited?

8       **A.** It's my understanding, yeah.

9       **Q.** Okay.

10               MR. GOLDSTEIN: If we can go to the next page,  
11 please, top paragraph, Max.

12       BY MR. GOLDSTEIN:

13       **Q.** Paragraph 7.2 is a paragraph Mr. Johnston reviewed with  
14 you during direct examination. Do you remember that?

15       **A.** Yes.

16       **Q.** All right. Let's start at the top. Okay? It  
17 reads, "The client hereby authorizes and directs State  
18 Street" -- I'm going to exclude the subject to language,  
19 unless I think it's relevant, "to place all fixed income  
20 securities orders through broker-dealer associates of State  
21 Street."

22               Right?

23       **A.** Uh-huh.

24       **Q.** All right. And so again, the client is Sainsbury's,  
25 right?

1     **A.** We're the client.

2     **Q.** Authorizes and directs State Street to place all fixed  
3 income security orders through its broker-dealer associates,  
4 right?

5     **A.** Yes.

6     **Q.** And we know from the preceding paragraph that at least  
7 two broker-dealer associates are State Street Global Markets  
8 LLC and State Street Global Markets International Limited,  
9 right?

10    **A.** Yes.

11    **Q.** All right. It then goes on to state, "In a manner,  
12 whereby such associates would act as the riskless principal  
13 agency counterpart."

14                   Do you see that?

15    **A.** Yes.

16    **Q.** All right. And so the contract clearly provides that the  
17 associates would be acting as the riskless principal agency  
18 counterparty, right?

19    **A.** Yes.

20    **Q.** Between the fund. That's Sainsbury's fund, correct?

21    **A.** Yes.

22    **Q.** And third-party market counterparties on the other side,  
23 right?

24    **A.** Yes.

25    **Q.** All right. The next sentence reads, "the client

1 authorizes and directs that such broker-dealer associates of  
2 State Street may accept compensation in lieu of commission in  
3 the form of a spread.

4 Do you see that?

5 **A.** Yes.

6 **Q.** All right. Now, when Mr. Johnston asked you a question  
7 about what that meant, I believe you testified that you  
8 interpreted "spread" to mean "fixed fee." Was I -- is that  
9 what you meant to testify to?

10 **A.** No.

11 **Q.** Okay. And so your understanding of this paragraph is  
12 that the broker-dealer associates, meaning State Street  
13 Global Markets, LLC, or State Street Global Market  
14 International Limited may accept compensation in lieu of  
15 commission, in the form of a spread. Right?

16 **A.** Yes.

17 **Q.** And as you testified a little bit earlier, "spread" means  
18 the difference, a markup or a markdown, correct?

19 **A.** Yes.

20 **Q.** And all of which relates to fixed income, securities  
21 transactions, right?

22 **A.** Yeah.

23 **Q.** Okay. And so what this means, if you understand -- what  
24 you understand this to mean is that riskless principal agency  
25 does not preclude a spread.

1       **A.** I'm not sure about that.

2       **Q.** Well, doesn't it clearly state riskless principal agency  
3 is how they would be acting, the associates?

4       **A.** Riskless principal means that there is no risk on --  
5 outside the trade, so it's done at a mid market price.

6       **Q.** All right. But I'm asking what this paragraph says. And  
7 what this paragraph says is that the associate --

8               THE COURT: His understanding of this paragraph.

9               MR. GOLDSTEIN: Well, what the paragraph says and  
10 then I'll ask him --

11              THE COURT: Okay.

12       BY MR. GOLDSTEIN:

13       **Q.** What the paragraph says is that, "The associates will act  
14 as riskless principal agency and" -- "and they may benefit  
15 from a spread."

16       **A.** The associates, yeah.

17       **Q.** That's what the -- that's what this paragraph provides,  
18 right?

19       **A.** But not State Street Bank Europe.

20       **Q.** Right.

21       **A.** Yeah.

22       **Q.** No, exactly, meaning the associates, right?

23       **A.** Okay.

24       **Q.** And so let me back up for a second. Okay. The way this  
25 works in the marketplace is that you have a contract, meaning

1 Sainsbury's has a contract with State Street Bank Europe,  
2 right?

3 **A.** Uh-huh.

4 **Q.** All right. This paragraph and the prior paragraphs talk  
5 about broker-dealer associates executing fixed income  
6 transactions, right?

7 **A.** Yeah.

8 **Q.** All right. And so what happens is State Street Bank  
9 Europe Limited, in their capacity as transition manager for  
10 Sainsbury's has to use a broker-dealer to execute trades in  
11 the marketplace for Sainsbury's, right?

12 **A.** Yes.

13 **Q.** All right. And so that broker-dealer stands between  
14 State Street Bank Europe Limited on one side and the  
15 marketplace on the other side, right?

16 **A.** Yeah.

17 **Q.** All right. And so your understanding of this paragraph  
18 is simply that that broker-dealer that sits between State  
19 Street Bank Europe Limited and the marketplace can benefit  
20 from a spread on fixed income transactions.

21 **A.** The associate broker-dealer can, yeah. As written on  
22 this contract.

23 **Q.** Right. And so -- now, this paragraph also provides, at  
24 the bottom, in interest of full clarity, it says, "The amount  
25 of compensation in the form of a spread, permitted to be

1 received by such broker-dealer associates in any such  
2 riskless principal transaction involving a fixed income  
3 security shall be specifically identified in the transition  
4 notice."

5 Right?

6 **A.** Yes.

7 **Q.** So this paragraph provides, in your understanding, that  
8 if there is a spread to be taken by the broker-dealer, it's  
9 going to be detailed in the transition notice, right?

10 **A.** Uh-huh.

11 **Q.** Right. So before we get to another place, you testified  
12 on direct examination, it was your understanding that State  
13 Street Bank Europe Limited was acting in an agency capacity.

14 Do you recall that testimony?

15 **A.** Yes.

16 **Q.** You met with members of the Federal Bureau of  
17 Investigation and were interviewed by Mr. Frank and --  
18 actually, Mr. Frank at some point in time, January 6, 2016.  
19 Do you recall meeting with members of Mr. Frank's prosecution  
20 team?

21 **A.** I do, yes.

22 **Q.** All right. And you were interviewed on that date,  
23 correct?

24 **A.** Yes.

25 **Q.** And they asked you all sorts of questions, like they



1 asked you today, questions about Sainsbury's transition,  
2 right?

3 **A.** Yes.

4 **Q.** And do you recall telling them, when you sat with them in  
5 January of 2016 -- by the way, it may seem elementary, but  
6 your memory of these events were better in January of 2016  
7 than they are today in June of 2018, right?

8 **A.** I have a pretty clear recollection of what was discussed.

9 **Q.** Okay. And so during that meeting with FBI personnel and  
10 Mr. Frank and his team, do you recall telling them you  
11 believe State Street acted as a principal on behalf of  
12 Sainsbury's?

13 **A.** I don't recall that.

14 MR. GOLDSTEIN: Your Honor, may I approach the  
15 witness and see if this refreshes his recollection?

16 THE COURT: Yes.

17 MR. GOLDSTEIN: Thank you.

18 BY MR. GOLDSTEIN:

19 **Q.** Mr. Johnson, you're free to read whatever part of the  
20 document you want to, but I specifically will point you to  
21 that particular line and that particular paragraph?

22 **A.** Yeah. Okay.

23 **Q.** Just read it to yourself.

24 **A.** Okay. Yeah.

25 **Q.** And having read that, does that refresh your memory as to

1 whether or not you told Mr. Frank and members of the FBI when  
2 you were interviewed in January 2016 that you believe State  
3 Street had acted as a principal on behalf of Sainsbury's?

4 **A.** If it says so. It was a pretty long meeting.

5 **Q.** Okay. And whether or not -- whatever you said in that  
6 particular day, the contract would just review clearly  
7 provides that the associates were acting on a riskless  
8 principal agency basis, correct?

9 **A.** Yeah, but the transition notice is what is -- overrides  
10 everything in the contract.

11 **Q.** We'll get to the transition notice, Mr. Johnson.

12 **A.** Okay.

13 **Q.** But the last paragraph we talked about is where it said  
14 that State Street was going to detail in the transition  
15 notice any spreads earned by the broker-dealer, right?

16 **A.** It does, yeah.

17 **Q.** All right.

18 MR. GOLDSTEIN: Let me direct your attention to  
19 paragraph 12, Max, the conflicts of interest and disclosure  
20 duties. Just the top paragraph.

21 So this is another provision of that particular  
22 contract, the transition management agreement, you executed  
23 in 2009 with State Street, correct?

24 **A.** Yes.

25 **Q.** And this particular paragraph deals with potential

1 conflicts of interests on State Street's behalf, right?

2 **A.** Uh-huh.

3 **Q.** And State Street, again, it's SSBEL, right?

4 **A.** Yes.

5 **Q.** And it reads, "State Street's employees comply with a  
6 conflict of interest policy with a view to managing any  
7 conflict which may arise between State Street's own interest  
8 and those of its associates and the interest of its clients,  
9 or between the client's interests and those of other  
10 clients."

11 Do you see that?

12 **A.** I see it.

13 **Q.** It goes on to read that, "State Street will inform the  
14 client of the nature and source of any conflict where it does  
15 not consider that the arrangements under the conflicts of  
16 interest policy are sufficient to manage a particular  
17 conflict."

18 Right?

19 **A.** Yeah, sorry. Can you read that again? I didn't quite  
20 see it.

21 **Q.** Sure.

22 "State Street will inform the client of the nature  
23 and/or source of any conflict where it does not consider that  
24 the arrangements under the conflicts of interest policy are  
25 sufficient to manage a particular conflict."

1 Do you see that?

2 **A.** Yes.

3 **Q.** And it goes on to read that, "The client agrees that  
4 State Street and its associates may provide services to the  
5 client, even though a potential conflict of interest, in  
6 relation to a particular investment or strategy may exist."

7 Do you see that?

8 **A.** Yes.

9 **Q.** And so it's your understanding, sir, right, that this  
10 particular paragraph provides that State Street can still act  
11 and its associates may still provide services, even if a  
12 potential conflict exists, right?

13 **A.** Yes.

14 **MR. GOLDSTEIN:** And then if you go on, Max, to the  
15 following paragraphs, the contract between Sainsbury's and  
16 SSBEL, particularizes some, but not all, potential conflicts,  
17 right? You see up top where it says, "Such potential  
18 conflicts may include, but shall not be limited to the  
19 following"?

20 **A.** Yeah. There's a list of them, yeah.

21 **Q.** So if we just jump to 12.1.4, the last paragraph on that  
22 page. It provides that one such conflict, potential  
23 conflict, is where "State Street and/or an associate may  
24 benefit from a commissioned fee, markup or markdown, payable  
25 by the client to the broker-dealer."

1 Do you see that?

2 **A.** Yes.

3 **Q.** And so your understanding of the contract is that even  
4 when this potential conflict exists, State Street and its  
5 associates may still provide services to Sainsbury's, right?

6 **A.** Yeah.

7 **Q.** All right. Next page, top paragraph.

8 "Another potential conflict that may exist is where  
9 an associate is acting as a broker-dealer, in respect of a  
10 fund transaction, and may benefit from a commission fee,  
11 markup or markdown, payable by the client."

12 Do you see that?

13 **A.** Yeah.

14 **Q.** All right. So this goes back to what we were talking  
15 about earlier, in terms of how these executions are placed in  
16 the marketplace. Meaning, State Street Bank Europe Limited  
17 places an order through its broker-dealer associate, the  
18 broker-dealer associate goes to the marketplace. There's a  
19 markup in terms of the price they pay and the price they pass  
20 on. And this provides that even when that potential conflict  
21 exists, State Street and its broker-dealer associates may  
22 still provide services to Sainsbury's."

23 Correct?

24 MR. JOHNSTON: Objection.

25 THE COURT: Kind of a long question.

1 MR. JOHNSTON: Compound.

2 THE COURT: Yes, Mr. Goldstein, maybe we can break  
3 it apart.

4 BY MR. GOLDSTEIN:

5 Q. Going back to what we talked about before, the  
6 marketplace. State Street Bank Europe Limited is not a  
7 broker-dealer, right?

8 A. It's not a broker-dealer.

9 Q. Right. It has affiliates or associates that are  
10 broker-dealers, right?

11 A. Yes.

12 Q. Those associates or affiliates go to the marketplace to  
13 execute orders on behalf of State Street Bank Europe Limited,  
14 right?

15 A. Yeah.

16 Q. They can benefit, meaning the associate broker-dealer can  
17 benefit, from a spread between the purchase price and the  
18 price that's passed on ultimately to State Street Bank Europe  
19 Limited, and/or Sainsbury's, right?

20 A. Uh-huh.

21 Q. And all this is saying to Sainsbury's, your understanding  
22 as the person who signed this contract, is that even when  
23 that potential conflict exists, State Street and its  
24 associates can still provide the services to Sainsbury's,  
25 right?

1       **A.**   Yup.

2       **Q.**   All right. Now, the next paragraph, 12.2, provides  
3       that "Neither State Street nor any associate shall be liable  
4       to account for and/or pay to the client any profit,  
5       commission, or remuneration made or received from or by  
6       reason of the fund transactions referred to in clause 12.1."

7               Do you see that?

8       **A.**   Uh-huh.

9       **Q.**   All right. And so your understanding, sir, of this  
10      particular subsection of the contract is that neither State  
11      Street nor any associate shall be liable to account for any  
12      money that may have been made by the broker-dealer in  
13      executing the fixed income securities?

14      **A.**   Yeah, but they did.

15      **Q.**   They did.

16      **A.**   They did repay us the commissions.

17      **Q.**   I can't hear you. I'm sorry.

18      **A.**   They did repay us the commissions. The markup.

19      **Q.**   Right, but this particular paragraph says they're not --

20      **A.**   That particular paragraph says that, yeah.

21      **Q.**   It says they're not responsible to account for any of  
22      that money, right?

23      **A.**   That's what it says.

24      **Q.**   So in all fairness to Sainsbury's and SSBEL, this  
25      particular provision, 12.2, conflicts or is in conflict with

1 the earlier paragraph, where it said that State Street would  
2 detail markups or spreads that were incurred, correct?

3 **A.** Yeah.

4 MR. JOHNSTON: If he can testify to his  
5 understanding as to whether it conflicts.

6 THE COURT: Correct. Sustained just as to  
7 conflict. You can ask him his understanding.

8 BY MR. GOLDSTEIN:

9 **Q.** Is it your understanding that this particular paragraph,  
10 12.2, is in conflict or is inconsistent with the prior  
11 paragraph where it said State Street would detail in the  
12 transition notice markups or spreads earned by its  
13 broker-dealer associates?

14 **A.** It would be appear to be.

15 MR. GOLDSTEIN: Max, if we could go to  
16 paragraph 13, fees and costs.

17 BY MR. GOLDSTEIN:

18 **Q.** Paragraph 13, fees and costs, "State Street will not  
19 charge a management fee for its services hereunder."

20 Do you see that?

21 **A.** Yes.

22 **Q.** "Client will be liable to pay commission on fund  
23 transactions in accordance with the relevant transition  
24 notice."

25 Right?



1       **A.** Uh-huh.

2       **Q.** This, too, is in direct conflict of your understanding,  
3       sir. This is in direct conflict with the transition notice  
4       that was ultimately executed between Sainsbury's and State  
5       Street for the transition that we're talking about, right?

6       **A.** Yeah. My understanding is the transition notice  
7       overrides everything in the contract, which is what I've said  
8       before.

9       **Q.** Okay. But according to the actual language in the TMA,  
10       State Street is not going to charge a management fee, right?

11       **A.** That's right.

12               MR. GOLDSTEIN: All right. Max, miscellaneous, the  
13       next page, please.

14       BY MR. GOLDSTEIN:

15       **Q.** A couple of quick paragraphs, Mr. Johnson. Nothing too  
16       controversial. "The agreement is governed by and construed  
17       in accordance with the laws of England and Wales."

18               Correct?

19       **A.** Uh-huh.

20       **Q.** "The agreement may only be modified or amended in  
21       writing, signed by both parties or their authorized  
22       representatives."

23               Right?

24       **A.** Yeah.

25       **Q.** "The agreement constitutes the entire and complete

1 agreement between the parties hereto, concerning the subject  
2 matter hereof."

3 Right?

4 **A.** Yes.

5 **Q.** "Supercedes all prior agreements."

6 Right?

7 **A.** Yeah.

8 **Q.** And it's signed by you, right?

9 **A.** Yes.

10 **Q.** All right. And then attached to this particular TMA is a  
11 form transition notice. Do you see that?

12 **A.** Yeah.

13 **Q.** Okay. If we can go to page 3 of this particular -- it  
14 sets out all of the manager's obligations, right?

15 **A.** Yup.

16 **Q.** All right. And without going through them word for word,  
17 there's a -- you know, 10 plus paragraphs in terms of what  
18 the manager's obligations are, correct?

19 **A.** Yeah.

20 **Q.** All right. Now, at some point, flash-forward to 2011,  
21 you were -- you wanted to do a transition from one asset  
22 class to another asset class, right?

23 **A.** Yes.

24 **Q.** And you appointed or hired Hewitt to manage the selection  
25 of a transition manager, right?

1       **A.**   Yes.

2               MR. GOLDSTEIN:  And if we could go to Exhibit 84-1.  
3       I believe it's in evidence.

4               Is that consistent with your records, Mr. Johnston?

5               THE WITNESS:  It's there.

6               MR. GOLDSTEIN:  No, no, I was asking the  
7       Government.

8       BY MR. GOLDSTEIN:

9       **Q.**   So this is the final proposal filed by State Street to  
10      Hewitt; is that correct?

11      **A.**   Yes.

12      **Q.**   And -- now, this was January of 2011, right?

13      **A.**   Yeah.

14      **Q.**   You already had a transition management agreement in  
15      place with State Street Bank Europe, right?

16      **A.**   Yeah.

17      **Q.**   But instead of simply going to State Street and asking  
18      them directly, meaning you, Sainsbury's, you went through a  
19      third-party consultant, right?

20      **A.**   Yes.

21      **Q.**   And so when State Street was bidding or submitting a  
22      response to the tender for this particular transition, at  
23      this point in time, you, Sainsbury's, would not have  
24      disclosed to State Street that you were the ultimate client,  
25      right?

1     **A.** That's correct.

2     **Q.** And so they wouldn't have been told that there was  
3 already an existing TMA in place, transition management  
4 agreement, right?

5     **A.** That's right.

6     **Q.** And they wouldn't know that there were already negotiated  
7 a whole set of terms with the client, meaning Sainsbury's,  
8 right?

9     **A.** Right.

10    **Q.** All right. And if we turn to the next page, there begin  
11 a whole series of questions that were asked by Hewitt on your  
12 behalf, correct?

13    **A.** Yes, I'm not familiar with this document.

14    **Q.** Okay. So you have not reviewed this document?

15    **A.** I don't recall reviewing it. Certainly not in the last  
16 seven years.

17    **Q.** Okay. And so Government didn't review it with you prior  
18 to you testifying?

19    **A.** No.

20    **Q.** How about State Street's response to the request for  
21 tender? Have you reviewed that?

22    **A.** State Street's response?

23    **Q.** Yes.

24    **A.** Is that a different document?

25    **Q.** Yes, there's a different document. A more fulsome

1 document. Have you seen that?

2 **A.** No, I haven't seen that.

3 **Q.** Okay. All right. Let's push forward, then.

4 **A.** The only thing I looked at was the advice that we got  
5 from Hewitt.

6 MR. GOLDSTEIN: Okay. If I can have Exhibit 109 --

7 THE COURT: Is that in evidence?

8 MR. GOLDSTEIN: Well, not 109 -- periodic notice --  
9 109.1.

10 THE COURT: 109.1 is in evidence.

11 BY MR. GOLDSTEIN:

12 **Q.** This is the transition notice that Mr. Johnston went  
13 through with you on your direct exam, correct?

14 **A.** Yes.

15 **Q.** And so again, at the top, it's directed to State Street  
16 Bank Europe Limited, right?

17 **A.** Yes.

18 **Q.** And that's, as we've learned, an entity distinct and  
19 separate from their broker-dealer associates, correct?

20 **A.** Yes.

21 **Q.** It's dated February 28, 2011, right?

22 **A.** Yeah.

23 **Q.** And where it says "Transition Agreement."

24 MR. GOLDSTEIN: If we could just blow up that  
25 paragraph, Max.

1           It says, "The undersigned appoints State Street to  
2 manage the liquidation or restructuring of the fund on the  
3 terms and subject to the conditions of the transition  
4 management agreement, dated 9th of July, 2009."

5           Do you see that?

6       **A.** Yes.

7       **Q.** And so this particular transition notice incorporates the  
8 terms and conditions that were set out in that contract that  
9 we just reviewed, correct?

10      **A.** Yes.

11      **Q.** All right. And so on the next page, where it talks about  
12 a transaction fee and it talks about a management fee,  
13 there's nothing here that repudiates or excludes the  
14 broker-dealer associates from benefitting from markups,  
15 markdowns, or spreads, is there?

16      **A.** No, but it was represented to us that that would be the  
17 only fee.

18      **Q.** But you never even dealt with State Street. You were  
19 dealing with Hewitt, correct? Is that correct?

20      **A.** Yeah, but Hewitt are our agents and they negotiated a  
21 flat fee of 350,000 pounds.

22      **Q.** So my question is, in terms of the -- someone looking at  
23 just the transition notice, there's nothing in here  
24 explicitly precluding State Street Bank Europe Limited's  
25 broker-dealer affiliates from being compensated in lieu of

1 commission in the form of a spread?

2 **A.** I think in the contract it says any markups or markdowns  
3 have to be put onto the transition notice and they're not.

4 **Q.** Right. And the transition management agreement also says  
5 that State Street should not be responsible for accounting  
6 for any remuneration earned by the State Street associate  
7 broker-dealer. We just went through that, right? Meaning my  
8 point is, there's a lot of contradictory terms here, isn't  
9 there?

10 **A.** Yeah, but my point, what I'm trying to get across is that  
11 the transition notice overrides all the terms of the contract  
12 and that's our understanding. And you know, through the --  
13 you know, the relationship, and the trust that we had with  
14 State Street at that time.

15 **Q.** Fair enough. So that was your understanding. My  
16 question in response to you is where does it say that in the  
17 transition notice?

18 **A.** The transition notice says there is a -- effectively a  
19 flat fee of 350,000 pounds for that job.

20 **Q.** And what does it say about broker-dealer associates?

21 **A.** It doesn't say anything.

22 **Q.** Right. And it also incorporates the terms of the TMA  
23 that you executed with State Street Bank Europe Limited,  
24 right?

25 **A.** Sorry --

1     **Q.** The first page of the transition notice explicitly  
2     incorporates the terms of the TMA that you executed with  
3     State Street Bank Europe Limited, right?

4     **A.** Yeah.

5             MR. GOLDSTEIN: Your Honor, I move to admit Exhibit  
6     478, the posttrade. The Government has not objection.

7             THE COURT: Is that correct?

8             MR. JOHNSTON: That's correct, Your Honor.

9             THE COURT: 478 is admitted.

10            (Exhibit No. 478 admitted into evidence.)

11     BY MR. GOLDSTEIN:

12     **Q.** Mr. Johnson, you were asked a series of questions by Mr.  
13     Johnston about the implementation shortfall as a result of  
14     the transition performed by SSBEL. Do you recall those  
15     questions?

16     **A.** Yes.

17     **Q.** And after a transition is complete, you receive what's  
18     called a post transition report; is that correct?

19     **A.** Correct.

20     **Q.** And that's something that you would look at with some  
21     particular care after a transition?

22     **A.** Yeah, it's a detail telling how much the transitions  
23     cost.

24     **Q.** Right. So if I can direct your attention to --

25            MR. GOLDSTEIN: It should be the fifth page, Max,



1 where it says "implementation shortfall."

2 BY MR. GOLDSTEIN:

3 **Q.** Implementation shortfall was SSBEL's explanation to you  
4 in terms of the actual cost incurred by Sainsbury's, correct?

5 **A.** Yes.

6 **Q.** All right. And it says, "Market trading commenced on the  
7 third of March and we completed approximately 53 percent on  
8 the first day."

9 Correct?

10 **A.** Yes.

11 **Q.** It says, "We are pleased to report the final  
12 implementation shortfall for the restructure was 19.1 BPS, or  
13 approximately 2.9 million pounds."

14 Is that correct?

15 **A.** Yeah.

16 **Q.** "Excluding the SSTM fee."

17 Right?

18 **A.** Yes.

19 MR. GOLDSTEIN: All right. And then, Max, if we  
20 can jump forward to the actual detail. So page 2 of the 33  
21 and if you could blow up the table on the bottom right-hand  
22 corner.

23 BY MR. GOLDSTEIN:

24 **Q.** Okay. This is a table representing the implementation  
25 shortfall analysis, correct?

1       **A.**   Yeah.

2       **Q.**   All right. And so what you see here is there's a row  
3       that's entitled "bid offer spread," right?

4       **A.**   Yes.

5       **Q.**   And that goes back to the transition management agreement  
6       that we reviewed before, meaning the bid offer spread is what  
7       we were talking about, in terms of the difference between the  
8       markup or markdown that a broker-dealer associate can charge  
9       to perform executions of fixed income securities?

10               MR. JOHNSTON: Objection. The prior document said  
11       nothing about bid offer spread.

12               THE COURT: Well, you can break it apart into  
13       two pieces.

14               MR. GOLDSTEIN: Sure.

15       BY MR. GOLDSTEIN:

16       **Q.**   When you testified earlier about markups and markdowns,  
17       you testified that that's commonly known as a spread, right?

18       **A.**   Yeah.

19       **Q.**   It's also commonly known as the bid offer spread, right?

20       **A.**   Yup.

21       **Q.**   Okay. And so in this line where it says, "bid offer  
22       spread," that's a reference to remuneration earned by  
23       broker-dealers in executing your transaction, your fixed  
24       income security transactions, right?

25       **A.**   Uh-huh.

1 Q. All right. And it provides that the cost for doing that  
2 was \$5,191,458, right?

3 A. Uh-huh.

4 Q. And it sets out the cost in terms of basis points and  
5 it's 33.3, correct?

6 A. Yeah.

7 Q. And so it also has opportunity costs, it has other costs  
8 in there, right?

9 A. Yeah.

10 Q. And when you testified that you must have hit a sweet  
11 spot, the opportunity cost, you gained money in terms of this  
12 transition, right?

13 A. Yes.

14 Q. And so that's why it's bracketed in parenthesis, right?

15 A. Yes.

16 Q. So it says that the total cost was \$2,990,322, right?

17 A. Uh-huh.

18 Q. Or 19.21 basis points, right?

19 A. Yes.

20 Q. And so in terms of the disclosure to Sainsbury's, every  
21 penny is accounted for in your posttrade report, right?

22 A. I'm not sure about that.

23 Q. What's missing from --

24 A. Well, I can't tell the -- the interpretation was that it  
25 was pretty light on detail.

1 Q. Okay. But you have the bid offer spread there, right?

2 A. Yeah. We had to have it forensically audited afterwards.

3 Q. Right. And in terms of your forensic audit, you don't  
4 have any information, do you, that even a penny was hidden in  
5 terms of the actual final cost to Sainsbury's. Meaning,  
6 there may be disagreement about whether or not State Street  
7 disclosed what it had earned, but there's no disagreement in  
8 terms of that every penny was disclosed in the implementation  
9 shortfall, right?

10 A. I don't know.

11 Q. As you sit here, has anyone ever told you that one penny  
12 was not accounted for in this transition?

13 A. No. But there were -- we were repaid some of the money  
14 by State Street.

15 MR. GOLDSTEIN: Okay. And if we can go to page 7,  
16 Max, please. 7 of 33. Big, bottom table, please.

17 BY MR. GOLDSTEIN:

18 Q. This table is entitled "Reconciliation to Pre-Transition  
19 Analysis." Do you see that?

20 A. Yes.

21 Q. And so what it shows is what the pre-trade estimates were  
22 and what the actual cost was, correct?

23 A. Yes.

24 Q. So in terms of the bid-offer spread, SSBEL estimated that  
25 it would cost Sainsbury's 38.1 basis points to execute this

1 transition, right?

2 **A.** Yes.

3 **Q.** But in the end, it actually cost less in terms of the bid  
4 offer spread, right? 33.3?

5 **A.** Yeah.

6 **Q.** So it was on the plus side of 4.8 basis points?

7 **A.** Yeah.

8 **Q.** And then it talked about total cost, and it said the  
9 estimated total cost was 38.4, correct?

10 **A.** Yes.

11 **Q.** And that the actual cost was 19.2, right?

12 **A.** Yes.

13 **Q.** Meaning, in short, what happened here was that the actual  
14 transition was far more favorable than was estimated out  
15 front by State Street Bank Europe Limited, correct?

16 **A.** Yeah. But transition managers do tend to overestimate,  
17 in my experience.

18 **Q.** Right. But you relied on the estimate, right?

19 **A.** We relied on the estimate. Obviously, we relied on the  
20 estimate.

21 **Q.** And you selected State Street, based on a representation  
22 that it would cost approximately 38.4 basis points to  
23 implement your transition strategy, right?

24 **A.** Uh-huh.

25 **Q.** And in the end, they came in at 19.2 basis points, right?

1       **A.** Yes.

2       **Q.** So they outperformed what they said the estimate would be  
3       at the outset, right?

4       **A.** Yeah. But as I said, I think a lot of it is due to  
5       market movements. But it was a better result than we  
6       expected.

7       **Q.** Better result than you expected. And in fact,  
8       Sainsbury's made money on the transition, right?

9       **A.** It was still a cost.

10               MR. GOLDSTEIN: No further questions.

11               THE COURT: Any redirect?

12               MR. JOHNSTON: Yes, Your Honor. Briefly.

13               **REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

14       BY MR. JOHNSTON:

15       **Q.** Mr. Johnson, on cross-examination, you were asked some  
16       questions about the bid-offer spread, correct?

17       **A.** Yeah.

18       **Q.** What role did you see State Street's transition desk as  
19       playing for you in the market?

20       **A.** We saw them as arranging the trades that were necessary  
21       to complete the transition of assets.

22       **Q.** Did you have an understanding whether they would be  
23       acting as your agent?

24       **A.** Yes, they were acting as our agent.

25       **Q.** And when an agent is acting on your behalf in the market,

1 who is on the other side of your agents transactions?

2 **A.** Another party, a counterparty.

3 **Q.** Do you have an understanding of whether those  
4 counterparties could be broker-dealers?

5 **A.** Yes.

6 **Q.** And was it your testimony that broker-dealers charged bid  
7 offers -- charged spreads?

8 **A.** Yes, they do.

9 **Q.** So when you -- when you receive a post trade report that  
10 gives you a bid-offer spread, did you have any way to know  
11 whether that was the spread of the other broker-dealers on  
12 the other side of the transaction, or your agent who was  
13 charging you a spread?

14 **A.** No, it was the people on the other side of the  
15 transaction.

16 **Q.** That was your understanding of what that term meant?

17 **A.** Yeah.

18 **Q.** Did you have an understanding whether your agent's  
19 compensation was built into the bid-offer spread in?

20 **A.** Yeah, the agent wasn't -- that compensation wasn't built  
21 into the bid-offer spread, no.

22 **Q.** At least that's what you thought?

23 **A.** That's what I thought, yeah.

24 **Q.** You were asked some questions about opportunity costs,  
25 correct?

1       **A.**   Yes.

2       **Q.**   And you were asked questions about the market having  
3       moved in your favor, correct?

4       **A.**   Yes.

5       **Q.**   When you hire someone -- in your understanding, when you  
6       hire a transition manager to act as your agent, who benefits  
7       from favorable movements in the market?

8       **A.**   We do.   Yes.

9       **Q.**   You were asked some questions about the specific legal  
10       entity that entered into an agreement with Sainsbury's,  
11       correct?

12       **A.**   Yes.

13       **Q.**   I'd like to show you Government Exhibit 137, which is  
14       already in evidence.  As you can see, it's the invoice that  
15       we previously looked at.  So if we can take a look at the  
16       upper right-hand cornerv -- sorry, of the upper, upper  
17       right-hand corner.

18                 What's the entity that sent you this invoice?  If  
19       you could read it out loud.

20       **A.**   "State Street Global Markets."

21       **Q.**   "International Limited"?

22       **A.**   International, yeah.

23       **Q.**   So not State Street Bank of Europe Limited?

24       **A.**   No.

25       **Q.**   At that time, were you paying attention to which



1 particular entity was invoicing you?

2 **A.** No. Especially like I said earlier, we just considered  
3 State Street to be one entity. They were always in the same  
4 building.

5 **Q.** And you were asked some questions about the transition  
6 management agreement. Just so we're clear, how many years  
7 before the transition was the transition management agreement  
8 signed?

9 **A.** Less than two.

10 **Q.** Let's take a look at page 7.

11 MS. LEAHY: Of?

12 MR. JOHNSTON: I'm sorry. Yes. Of Exhibit 3,  
13 please. Zoom in on the top paragraph.

14 BY MR. JOHNSTON:

15 **Q.** So you were asked some questions, if I'm correct, about  
16 various entities existing within State Street, correct?

17 **A.** Yes.

18 **Q.** And particularly about compensation that associate  
19 broker-dealers may earn, correct?

20 **A.** Yeah.

21 **Q.** So directing your attention to the bottom where it says,  
22 "The amount of compensation, in the form of a spread,  
23 permitted to be received by such broker-dealer associates, in  
24 any such riskless principal transaction involving a fixed  
25 income security, shall be specifically identified in the

1 transition notice."

2 **A.** Yes.

3 **Q.** Was there a spread identified in the transition notice?

4 **A.** There was not.

5 **Q.** What was the only fee that was identified in the  
6 transition notice?

7 **A.** 350,000 pounds.

8 **Q.** Who had led you to believe that 350,000 pounds was the  
9 only amount that you'd be charged?

10 MR. GOLDSTEIN: I object, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Aon Hewitt.

13 BY MR. JOHNSTON:

14 **Q.** And I actually want to show you an e-mail that's been  
15 admitted into evidence, the -- I believe it's 109. If we can  
16 zoom in at the top.

17 Do you recognize this e-mail, or at least any of  
18 the names on this e-mail, Mr. Johnson?

19 **A.** Yeah, I recognize the -- I recognize all the names.

20 **Q.** And in looking at this e-mail, what has -- what's being  
21 sent to you?

22 **A.** It's a periodic notice.

23 **Q.** And if we can take a look at the periodic notice, 109-1,  
24 and go to page 2. Zoom on the signature block.

25 Who signed the periodic notice on behalf of State

1 Street?

2 **A.** Edward Pennings.

3 MR. JOHNSTON: Thank you, Your Honor. No further  
4 questions.

5 THE COURT: Any recross?

6 MR. GOLDSTEIN: No recross.

7 THE COURT: All right. Thank you very much,  
8 Mr. Johnson. You're excused.

9 Next witness?

10 MR. JOHNSTON: The Government calls Roul Haerden to  
11 the stand.

12 MR. WEINBERG: Judge, may we approach the bench  
13 while the next witness is coming?

14 THE COURT: Sure.

15 MR. WEINBERG: You have a juror raising their hand.

16 THE JUROR: Can I go to the bathroom?

17 THE COURT: Sure. You all can take a break. Come  
18 back in five minutes.

19 All rise for the jury.

20 (The jury exits the courtroom.)

21 (The following discussion held at the bench.)

22 MR. WEINBERG: What I want to try to do is guard  
23 against the future witnesses from the State Street clients  
24 blurting out that State Street repaid them.

25 MR. FRANK: We've instructed Mr. Haerden's attorney

1 in the break that he should not do that. But I will point  
2 out that, in this particular case, Mr. Johnston interrupted  
3 him before he completed his sentence, and it was then  
4 elicited at least three times by Mr. Goldstein on  
5 cross-examination.

6 MR. GOLDSTEIN: What was?

7 MR. FRANK: The fact that they were reimbursed by  
8 State Street. So I can't guard against what happens on  
9 cross-examination.

10 MR. GOLDSTEIN: They were reimbursed.

11 THE COURT: I think, in fairness, he testified to  
12 it in cross-examination. He didn't specifically -- Mr.  
13 Goldstein didn't ask for it.

14 MR. FRANK: I agree, Your Honor.

15 THE COURT: But the rest of it implies that he  
16 wanted it.

17 THE DEPUTY CLERK: The witness is still in the  
18 courtroom.

19 MR. FRANK: The next witness is here, and I don't  
20 know when he came in.

21 THE DEPUTY CLERK: And he wants to know if he can  
22 stay in the future to watch.

23 THE COURT: Oh. Mr. Johnson wants to know if he  
24 can stay in the courtroom?

25 Do you guys have a view?

1 MR. FRANK: We don't have an objection.

2 MR. GOLDSTEIN: I don't care.

3 THE COURT: Mr. Johnson is done, he can stay if he  
4 wishes.

5 MR. FRANK: Mr. Haerden I don't believe was here  
6 during the prior testimony.

7 THE COURT: No, he was not.

8 MR. WEINBERG: You'll tell all of these witnesses  
9 in advance?

10 MR. JOHNSTON: There's no question that we will; as  
11 I tried to walk the line on the direct with, "At some point  
12 did you learn," not the basis for how he learned he was  
13 overcharged.

14 THE COURT: I didn't think you elicited.

15 MR. JOHNSTON: Right.

16 MR. WEINBERG: So I think if they were  
17 instructed --

18 THE COURT: How -- this witness is short direct?

19 MR. FRANK: Short.

20 MR. GOLDSTEIN: Shouldn't be that long.

21 THE COURT: Same as the last one?

22 MR. FRANK: If anything, shorter.

23 THE COURT: So we'll be done with this witness  
24 today?

25 MR. FRANK: Uh-huh.

1 THE COURT: Do you have anyone else for today?

2 MR. FRANK: No. But we would like to be done with  
3 this witness today.

4 THE COURT: Yeah. We're going to go until 4:30.

5 And then in terms of the scheduling for tomorrow,  
6 assuming we're done -- we'll be done with this witness today.  
7 And then tomorrow, you have another -- at 9 o'clock  
8 another --

9 MR. FRANK: Mr. McKnight.

10 THE COURT: He's with?

11 MR. FRANK: Royal Mail.

12 THE COURT: Royal Mail. Same direct, around, or a  
13 little bit longer?

14 MR. JOHNSTON: A little longer.

15 MR. FRANK: Maybe slightly longer.

16 MR. JOHNSTON: A half hour.

17 MR. FRANK: We'll keep it short.

18 THE COURT: Similar cross or shorter?

19 MR. WEINBERG: No longer and probably shorter. If  
20 I'm doing it. We haven't --

21 THE COURT: You haven't thought that out. Okay.  
22 And then after that, who else?

23 MR. FRANK: We have short witnesses. We have --  
24 well, their testimony will be short. We have -- well, their  
25 testimony will be short. We have Mr. Dionisio, Mr. Finocchi,

1 I'm not sure in which sequence. But they're both traders.

2 THE COURT: Like do you want to go -- like today,  
3 should I tell them at the end of the day we'll be going  
4 tomorrow afternoon?

5 MR. FRANK: No, I think we can end at 1:00  
6 tomorrow. It's totally fine. Our concern was getting the  
7 foreign witnesses out.

8 THE COURT: No, no, I don't have a problem with it,  
9 but I'd like to tell them. I would like to tell them, if  
10 they're not coming in tomorrow, today, if I can. So the  
11 bottom line is even, if we just go to 1:00, we're fine and on  
12 track. Okay. Fine.

13 (Bench conference concluded.)

14 MR. JOHNSTON: Your Honor, may the witness approach  
15 the witness stand?

16 THE COURT: Yes.

17 Mr. Haerden, why don't you sit down. We're waiting  
18 for everyone to go to the men's room and the women's room.

19 (Court in recess at 2:54 p.m.

20 and reconvened at 2:57 p.m.)

21 THE COURT: Okay. You can go get the jury.

22 We have everybody, right? Yeah.

23 (The jury enters the courtroom.)

24 THE COURT: So the Government called the next  
25 witness.

1                   What's his name, Mr. Johnston?

2                   MR. JOHNSTON: I'll let him pronounce it, so I  
3                   don't --

4                   THE COURT: Why don't you state your name for the  
5                   record, sir, so somebody can state it correctly.

6                   THE WITNESS: Yes. My name is Roul Haerden.  
7                   R-o-u-l, H-a-e-r-d-e-n.

8                   MR. JOHNSTON: Mr. Haerden --

9                   THE COURT: Hold on. Maria needs to administer the  
10                  oath.

11                  (The witness was duly sworn.)

12                  THE COURT: Please be seated.

13                  Go ahead, Mr. Johnston.

14                                   **ROUL HAERDEN**

15                  having been duly sworn, testified as follows:

16                                   **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

17                  BY MR. JOHNSTON:

18                  **Q.** Mr. Haerden, how old are you?

19                  **A.** I'm 41 years old.

20                  **Q.** Where do you live?

21                  **A.** I live in Almere, in the Netherlands.

22                  **Q.** What do you do for work?

23                  **A.** I currently work at an asset management company in  
24                  Amsterdam, called Kempen Capital Management.

25                  **Q.** How long have you worked in asset management?



1     **A.**   18 years now.

2     **Q.**   What sort of education do you have?

3     **A.**   I have two degrees in finance.

4     **Q.**   Is one of those a graduate degree?

5     **A.**   Yeah. Master's degree and a postgraduate agree --  
6     degree.

7     **Q.**   Did you used to work at a pension fund called the doctors  
8     pension fund?

9     **A.**   Yes, I did.

10    **Q.**   When did you work there?

11    **A.**   I worked there in the period from 2007 to 2013.

12    **Q.**   What was your role there?

13    **A.**   I was a portfolio manager at the pension fund, which  
14    means that I partially take care of the money that the  
15    pension funds invest in several asset clauses.

16    **Q.**   Where is this fund located?

17    **A.**   The fund is located in Utrecht in the Netherlands.

18    **Q.**   Do you mind, for purposes of these questions, if we call  
19    it the Dutch Doctors Fund?

20    **A.**   That's okay.

21    **Q.**   What types of assets did the Dutch Doctors Fund invest  
22    in?

23    **A.**   They invested in a variety of assets, with mainly bonds,  
24    equities, real estates, and private equity.

25    **Q.**   Who are the beneficiaries of the Dutch Doctors Fund?

1     **A.** The beneficiaries of the fund are the Dutch general  
2 practitioners and the medical specialists. So around 12,000  
3 people.

4     **Q.** What, if any, responsibility did you have to the  
5 beneficiaries of this fund?

6     **A.** To make sure that we make good investments for them, so  
7 that, in the end, they can have a decent pension plan and  
8 also a chance of good indexation.

9     **Q.** What, if any, impact did this responsibility have on how  
10 you engaged outside providers for the fund?

11     **A.** It was quite important for us, when we selected external  
12 managers, that we looked at the best available managers.  
13 Yeah. Available in the world, and we took great detail in  
14 selecting those managers.

15     **Q.** What factors would you look at when selecting a manager?

16     **A.** For example, the quality of the investment team, the  
17 broader organization, the investment process itself, the  
18 performance of the fund to be invested in, and also costs  
19 that were related to the asset manager.

20     **Q.** In general, who bears the cost when the Dutch Doctors  
21 Pension Fund loses money?

22     **A.** Those are the ultimate beneficiary holders, so i.e., the  
23 pensioners, or the general practitioners and the medical  
24 specialists.

25     **Q.** Did the Dutch Doctors Fund ever have occasion to hire a

1 transition manager?

2 **A.** Yes, they did.

3 **Q.** And directing your attention to 2010, did you hire a  
4 transition manager in that period?

5 **A.** Yes, we did.

6 **Q.** What was going on in the fund that required the services  
7 of a transition manager?

8 **A.** At that stage, we had government bonds portfolio, that  
9 invested in broad government bonds throughout all of Europe.  
10 Given the fact that the euro crisis was quite alive in that  
11 period, the pension fund board decided to scale down risk and  
12 to move to the more safe account, which, like, for example,  
13 Germany and the Netherlands. For that specific pot we hired  
14 a transition manager to transform the portfolio to the  
15 desired portfolio.

16 **Q.** If you don't mind, do you think you can have the  
17 microphone moved a little bit closer to you just so --

18 **A.** Yeah.

19 **Q.** How many -- what's the size of assets that needed to be  
20 purchased and sold?

21 **A.** My recollection, that was around 1.6 billion euros.

22 **Q.** Who was managing your old portfolio?

23 **A.** That was being managed by State Street Global Advisors.

24 **Q.** Is that the same unit as State Street's transition  
25 management?

1     **A.** No. It's a different unit. So State Street Global  
2     Advisors is the asset manager that we selected to manage this  
3     fund. And State Street, the transition manager was part of  
4     State Street bank, so it's a separate legal entity.

5     **Q.** Who was going to manage the portfolio after the  
6     transition occurred?

7     **A.** State Street Global Advisors, the asset manager. So it  
8     was only for a short moment of time that the transition  
9     manager stepped in to change the portfolio, then they gave it  
10    back to the asset manager, and they could continue to take  
11    care of the portfolio.

12    **Q.** So is what you're saying that the transition manager  
13    serves as an interim or caretaker?

14    **A.** Yes, that's correct.

15    **Q.** Why did you need the services of a transition manager, as  
16    opposed to just having your asset manager do this?

17    **A.** For the pension fund, it was very important to have  
18    transparency on the expected costs that were involved in such  
19    a large transition. State Street, the asset manager was not  
20    able to provide very much detail what the expected cost would  
21    be, and the transition manager was in a better position to  
22    provide that insight, what the cost would be so that we could  
23    make a well-informed decision to we move on or not.

24    **Q.** To what extent, if any, were the transition managers fees  
25    a factor in deciding to use such a transition manager?

1     **A.** They were an important part, because fees are a fixed  
2     component in the total cost that you can have when you move a  
3     portfolio. The other part of the costs are the potential  
4     market impact, which it's not known in advance. So fees were  
5     the only factor that you knew in advance with certainty.

6     **Q.** You're saying the transition manager's fees were the only  
7     thing that could be known in advance?

8     **A.** Yes.

9     **Q.** And what couldn't be known in advance?

10    **A.** The total potential market impact that could occur when  
11    we move this portfolio in the market.

12    **Q.** Who suggested that you use State Street as a transition  
13    manager?

14    **A.** The suggestion was made by State Street Global Advisors,  
15    the assets manager that did not have sufficient insight to  
16    provide information themselves.

17    **Q.** Did you consider other transition managers, other than  
18    State Street?

19    **A.** Not to my recollection.

20    **Q.** Why not?

21    **A.** Because we received sufficient transparency in advance of  
22    the trade, and also the costs, what were being charged to us  
23    seemed fair at that moment.

24    **Q.** Who did you interact with at State Street transition  
25    management, with respect to the deal you hired them for?

1     **A.** There were two people, that was Edward Pennings and Rick  
2 Boomgaardt.

3     **Q.** Did you ever interact with Ross McLellan?

4     **A.** No.

5     **Q.** Until today, have you seen Ross McLellan?

6     **A.** No, I have never seen him.

7     **Q.** I'd like to show you an e-mail that's been admitted into  
8 evidence, Government Exhibit 34. If we could take a look at  
9 page 2, please.

10             Mr. Haerden, do you recognize this e-mail?

11     **A.** Yes, that's from me.

12     **Q.** And I want to direct your attention to where you say, on  
13 the first paragraph, "We also are having some internal  
14 discussions whether we should use a transition manager, and  
15 if these activities will not cost us additional money in  
16 terms of direct or indirect fees."

17             What are you asking Mr. Pennings and Mr. Boomgaardt  
18 in this e-mail?

19     **A.** I first read the specific part before I give you an  
20 answer, because it has been awhile.

21     **Q.** Sure.

22     **A.** (Witness reads the document.)

23             The question that I asked is what the expected  
24 costs would be if we would hire a transition manager, because  
25 you bear some costs because of -- you enter the market by

1 trading those securities. But we also expected that we had  
2 to pay the transition manager a fee for the services, of  
3 course.

4 **Q.** So in this question, whose fees are you asking about?

5 **A.** I am asking for the fees that are being charged by the  
6 transition manager.

7 **Q.** Did you get a response to this question right away?

8 **A.** No. Only later on.

9 MR. JOHNSTON: All right. Let's take a look at  
10 Government Exhibit 38, which has been admitted into evidence.  
11 If we could zoom in on the top e-mail, please, Erin.

12 BY MR. JOHNSTON:

13 **Q.** As you can see, this is -- was sent from Mr. Pennings to  
14 yourself, Mr. Haerden, with CCed to several individuals.

15 Do you recognize the name Lex Ravensbergen?

16 **A.** Yes, that was my superior at that time.

17 **Q.** And what about Michel Salden?

18 **A.** That was a colleague of me.

19 **Q.** And what about Faheem Malik?

20 **A.** Faheem Malik was a salesperson that worked at State  
21 Street Global Advisors.

22 **Q.** Now, directing your attention to, actually, the second  
23 e-mail --

24 MR. JOHNSTON: So let's go further down, Erin, to  
25 the one right below this.

1 BY MR. JOHNSTON:

2 **Q.** So the prior e-mail, as you can see, Mr. Haerden, you  
3 write, "Do the estimated trading costs include the fees that  
4 you will charge, and how much will these fees in basis point  
5 or in cash amount approximately be?"

6 Do you see that?

7 **A.** Yes.

8 **Q.** What were you trying to ask -- or what were you asking  
9 Mr. Pennings when you wrote this e-mail?

10 **A.** Yeah. My specific question was that whether the trading  
11 ^ costs cost that were being charged, if that also included  
12 the fees that were being charged by the transition manager,  
13 as well. And I made two specific questions about basis  
14 points, because that's a normal term that we use in the fixed  
15 income world, and also in cash amount, to get an approximate  
16 feeling what the expected cash cost would be.

17 **Q.** Why do you use the term "approximately"?

18 **A.** If you trade such a large portfolio, so a portfolio of  
19 1.6 billion euros, you do not know in advance what the exact  
20 cash amount will be. You can know what the expected fee  
21 would be, for example, in terms of basis points, because  
22 that's a fixed number. But you have to multiply that by a  
23 sort of metric called duration, and then also multiply that  
24 by the portfolio size to get the expected euro amount. So  
25 that's why I use "approximately," because it's such a large



1 number that I did not expect it to be precise on the exact  
2 euro.

3 **Q.** So you're using "approximately" to refer to the cash  
4 amount?

5 **A.** Exactly.

6 **Q.** Are you using "approximately" to refer to basis point?

7 **A.** No. Because basis point is a very specific number in  
8 this case.

9 **Q.** And when you -- when you're referring to the trading  
10 costs, are you referring to third-party trading costs or the  
11 transition manager's trading costs?

12 **A.** In total, the transition manager trading cost. But the  
13 transition manager trading costs are also partly related with  
14 the third-party manager trading --

15 Excuse me, what do you want by third-party trading  
16 cost?

17 **MR. JOHNSTON:** Sure.

18 **THE COURT:** Did he say, what does he mean by --

19 **MR. JOHNSTON:** Yeah, he's asking my question.

20 **THE COURT:** I know. But what I'm wondering, what  
21 you really want to know is: What did he mean by trading  
22 cost?

23 **MR. JOHNSTON:** Yeah. So I'll ask some questions to  
24 get into that.

25 **BY MR. JOHNSTON:**

1     **Q.** When you're hiring a transition manager, did you have an  
2     understanding whether they were acting as a principal or an  
3     agent for you?

4     **A.** As an agent in this case.

5     **Q.** And when you hire a transition manager as an agent, what  
6     did you expect the agent to be doing for you in the  
7     marketplace?

8     **A.** The agent has the task to perform a so-called "best  
9     execution" basis. They need to find the cheapest bonds  
10    available that can be bought and sold in the market so that  
11    the expected trading cost will be as low as possible. That's  
12    the job of the agent. So it's called best execution, and you  
13    pay a fee for that service.

14    **Q.** So whose fee are you asking about in the highlighted  
15    portion?

16    **A.** I'm asking about a fee that will be charged by the  
17    transition manager.

18    **Q.** Which would be on top of anything else?

19    **A.** On top of the market costs.

20    **Q.** Understood. Let's go --

21                   Oh, at this point, Mr. Haerden, had the Dutch  
22    Doctors Fund made a final decision to hire State Street as a  
23    transition manager?

24    **A.** No. Because we still did not have the full picture  
25    complete, before we could move on and go back internally to

1 make a final decision.

2 **Q.** Let's take a look at Mr. Pennings' response. And now to  
3 highlight the second bullet point.

4 "In the analysis, we have built in one basis point  
5 that the execution desk takes out of the spread. So yes, the  
6 total implementation shortfall estimate does include all  
7 fees."

8 What was your understanding of what Mr. Pennings  
9 was telling you in this e-mail?

10 **A.** Mr. Pennings told me that he was going to charge  
11 one basis point as a commission for the activities that State  
12 Street would perform.

13 **Q.** What was your understanding of who would get the benefit  
14 if State Street did better than expected?

15 **A.** As is the case in an agency trade, the benefit, but also  
16 the shortfall, is always for the pension fund itself. So we  
17 still run the full risk.

18 **Q.** Conversely, if the market went down, who would suffer?

19 **A.** The pension fund.

20 MR. JOHNSTON: You can take this down.

21 I'd like to show you, the witness only, a document  
22 marked Government Exhibit 40.

23 If we can zoom in sort of at the top third, Erin.

24 MR. GOLDSTEIN: There's no objection, Your Honor,  
25 if the Government just wants to move it in.

1 MR. JOHNSTON: We can move into evidence,  
2 Government Exhibit 40.

3 THE COURT: Admitted.

4 (Exhibit No. 40 admitted into evidence.)

5 MR. JOHNSTON: If we can zoom in on the top third  
6 for Mr. Haerden's benefit.

7 BY MR. JOHNSTON:

8 Q. Do you recognize this document, Mr. Haerden?

9 A. Yes.

10 Q. What is it?

11 A. It's a so-called investment management agreement. What  
12 it means is it's an agreement between us and the transition  
13 manager.

14 Q. And what -- directing your attention to the parties here,  
15 one says -- and I'm not going to read it in Dutch, but who --  
16 what entity is that?

17 A. That is the Dutch Doctors that you refer to.

18 Q. That's been called in this agreement the customer?

19 A. Exactly.

20 Q. And why is the counterparty State Street Global Advisors?

21 A. The counterparty is State Street Global Advisor, because  
22 they are the asset management firm that still manages the  
23 total portfolio on behalf of us.

24 Q. And what was your understanding of what the purpose of  
25 this letter was?

1     **A.** My understanding of the purpose of this letter was that  
2     State Street, the asset manager would give the portfolio to  
3     the transition manager for a certain time period; the  
4     transition manager would do its job and give the new  
5     portfolio back to State Street, the asset manager, and they  
6     could move on with managing the portfolio as it was.

7             MR. JOHNSTON: Let's take a look at page 2, please.  
8     If we could -- sorry, page 3, first. If you could zoom in at  
9     the signatures.

10    BY MR. JOHNSTON:

11    **Q.** Do you recognize any of the names here, Mr. Haerden?

12    **A.** Yes, I do.

13    **Q.** Which ones?

14    **A.** Let's start with the bottom left, Jan Willem Baan. That  
15    was the CIO of the Doctors Pension Fund. The person to the  
16    right, Mr. Van der Linden, was the actuary. And the person a  
17    little bit higher was Edward Pennings, the person that worked  
18    for the transition management company.

19    **Q.** Did you review this agreement before it was signed?

20    **A.** Yes, I did.

21    **Q.** Let's take a look at page 2, please. We can zoom in at  
22    paragraph 5 at the bottom, Roman numeral V.

23             Directing your attention to where it says, "The  
24    transition manager is expressly authorized by the  
25    customer" -- if we could highlight that -- and then, "to

1 execute portfolio transactions through its affiliated  
2 broker-dealers" -- and then further down -- "who may benefit  
3 from a markup or markdown on such portfolio transactions."

4 What was your understanding of what that term or  
5 that sentence meant in the contract?

6 **A.** Yup. If State Street -- the transition manager was going  
7 to buy or sell bonds, they could apply so-called markup or  
8 commission on those -- on those bonds when they performed the  
9 execution of this transition.

10 **Q.** Did you have an understanding as to the amount that --  
11 the amount of the spread or a markup that State Street's  
12 affiliate was authorized to apply to your trades?

13 **A.** Yes, I did. And that was being confirmed in the earlier  
14 e-mail that you sent. So the one basis point.

15 **Q.** And then further down, where it says, "Bonds will be  
16 executed on a competitive, multidealer basis, demonstrating  
17 best execution, and priced net as per market convention,"  
18 what's your understanding of what it means for bonds to be  
19 executed on a competitive, multidealer basis, demonstrating  
20 best execution?

21 **A.** It means that a transition manager, in this case that  
22 works as an agency, has the role to select the best  
23 broker-dealers available that show the best prices for  
24 certain bonds to trade. And by "net," I mean that it takes  
25 into account all costs that are being charged.

1     **Q.** So what does that mean with respect to whether a  
2     commission charge is separately broken out?

3     **A.** To my knowledge, this net means that the commissions are  
4     included in the price.

5     **Q.** Now, is there anywhere in this agreement that that  
6     one basis point number is actually spelled out?

7     **A.** No, it is not.

8     **Q.** And why isn't it? Why not?

9     **A.** Because we earlier received a confirmation by e-mail from  
10    Edward Pennings that we agreed on the one basis point fee  
11    that was being charged, and it was, for me, sufficient enough  
12    to move on because we had an agreement on paper, and that  
13    was, for me, okay.

14    **Q.** Let's take a final look at page 1. If we can go and zoom  
15    on the actual date of this agreement.

16                 Is that date the same as that e-mail that you  
17    previously testified about?

18    **A.** Yes, that's correct.

19    **Q.** Was this letter signed before or after receiving that  
20    e-mail from Mr. Pennings?

21    **A.** After receiving the e-mail. Because we were waiting to  
22    get a final confirmation of what the costs would be; because  
23    otherwise, we did not have the picture complete before we  
24    could proceed and also go to our board to ask for permission.

25                 MR. JOHNSTON: You can take this down.

1 BY MR. JOHNSTON:

2 Q. Did there come a time, prior to the trading actually  
3 starting, where Mr. Pennings contacted you regarding the cost  
4 of clearing futures?

5 A. I'm not sure. But I recall that we were not allowed to  
6 trade futures, and hence, we had to -- so hence, Edward  
7 Pennings had to buy and sell only bonds in the portfolio. So  
8 he was not allowed to use futures on this trade.

9 Q. Who did the Dutch Doctors Pension Fund use to clear their  
10 futures?

11 A. The funds used JP Morgan as a standard account party to  
12 use futures, and we were obliged to use JP Morgan, also, in  
13 this case. So that's the reason why we could not use State  
14 Street or give State Street the mandate to trade futures.

15 Q. Do you recall whether you told Mr. Pennings that?

16 A. I think that was later than the 17th of June, because we  
17 had that information and we only received that information  
18 later on.

19 Q. So after the agreement had already been signed?

20 A. Yes.

21 Q. What, if anything, do you recall telling Mr. Pennings  
22 about that?

23 A. I told him that we were not allowed to use State Street  
24 as an agent to trade futures, and that we had to stick by our  
25 owner-custodian, JP Morgan, and that he had to move on with



1 trading the portfolio, so only in bonds and not in futures  
2 then.

3 **Q.** So what was the only -- what was the amount that -- or  
4 the rate that you thought you were paying for State Street's  
5 services?

6 **A.** As I was being shown in the e-mail, my understanding was  
7 that it was one basis point, because that is what we agreed  
8 upon.

9 **Q.** At any point after signing that agreement, did you agree  
10 to a different fee?

11 **A.** No.

12 **Q.** Did the transition actually go forward?

13 **A.** Yes, it did.

14 **Q.** How did State Street perform?

15 **A.** They performed well, compared to their estimated trading  
16 cost.

17 **Q.** Were you satisfied?

18 **A.** Yes.

19 **Q.** What was your understanding of what you had been charged  
20 by State Street in the course of this?

21 **A.** One basis point, because that is what we agreed upon in  
22 the e-mail.

23 **Q.** At some point, did you learn that the Dutch Doctors Fund  
24 had been charged a different amount?

25 **A.** Yes, we did. I think it was late 2011 or early 2012.

1     **Q.** By how much were you -- how different was the charge that  
2     you were actually charged?

3     **A.** We learned that it was a charged that was 50 percent  
4     higher, one-and-a-half basis points.

5     **Q.** What did that work out to in dollar or euro terms?

6     **A.** I think it was around 1.5 million euros that was being  
7     charged additionally.

8     **Q.** How significant, if any, is 1.5 million to the Dutch  
9     Doctors Pension Fund?

10    **A.** It's very significant, because you can pay a lot of  
11    pensions from that money.

12    **Q.** Had you known that you would be paying this fee, would  
13    that have affected your decision about hiring -- whether to  
14    hire State Street as a transition manager?

15    **A.** Yes. Because I thought the one basis point was a fair  
16    number, given my earlier market experiences that I had with a  
17    previous job. And I -- due to my understanding, one basis  
18    point, in that range, was a fair number to trade government  
19    bonds with.

20    **Q.** What is this prior experience that you're speaking of?

21    **A.** I used to work at another pension fund called APG, the  
22    second largest pension fund in the world. They manage around  
23    500 billion euros, and I also managed there a so-called swap  
24    portfolio. And I was involved with our trading desk to trade  
25    swaps as well. So that's where I learned what estimated

1 trading costs or markups were that was being charged by trade  
2 by counterparties.

3 **Q.** So you testified that, at the time you made a decision  
4 that, one sounded fair and reasonable?

5 **A.** Yes.

6 **Q.** What about 1.5?

7 **A.** I think that was far higher, given the fact that -- to  
8 give you maybe an example government bonds, the bid-offer  
9 spreads are very tight, maybe three or four basis point. So  
10 if you add one basis point or one-half basis point, compared  
11 to that bid offer of three or four basis points, I think that  
12 is quite substantial.

13 **Q.** How did the extra charge affect the implementation  
14 shortfall that the fund received?

15 **A.** In the end, we got a worse deal, because we were being  
16 overcharged.

17 **Q.** What, if any effect, did this experience have on your  
18 business relationship with State Street?

19 MR. GOLDSTEIN: Objection, Your Honor.

20 THE COURT: Overruled.

21 You can answer the question.

22 BY MR. JOHNSTON:

23 **Q.** The question, Mr. Haerden, is, what, if any effect, did  
24 this experience have on your business relationship with State  
25 Street?

1     **A.** A negative effect, because we put State Street on a  
2     so-called blacklist for a while, and we decided not to do  
3     trades with them anymore.

4     **Q.** How long did they remain on the blacklist?

5     **A.** I think for maybe one or two years.

6     **Q.** At the end of the day, if the Dutch Doctors Pension Fund  
7     loses money, out of whose pocket does it come?

8     **A.** Eventually out of the pocket of the general practitioners  
9     and the medical specialists, because they pay the premiums  
10    for their pension fund.

11           MR. JOHNSTON: Thank you. No further questions.

12           THE COURT: Cross-examination.

13           MR. GOLDSTEIN: Thank you.

14           **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT**

15    BY MR. GOLDSTEIN:

16    **Q.** Mr. Haerden, you testified you've never met or seen Ross  
17    McLellan; is that correct?

18    **A.** Yes, that's correct.

19    **Q.** Back at the time of the transition, you had absolutely no  
20    communications with Mr. McLellan, correct?

21    **A.** That's correct.

22    **Q.** Your point of contact was with other individuals at State  
23    Street Bank Europe Limited, correct?

24    **A.** Yes.

25    **Q.** Edward Pennings and other individuals?

1       **A.** Yes, that's correct, Edward Pennings and Rick Boomgaardt.

2               MR. GOLDSTEIN: Max, if I could have Government  
3 Exhibit -- or Exhibit 34, the second page.

4 BY MR. GOLDSTEIN:

5       **Q.** This is an e-mail that Mr. Johnston went through with  
6 you, in terms of an e-mail from you, to Mr. Pennings and Rick  
7 Boomgaardt, correct?

8       **A.** Yes.

9       **Q.** And directing your attention, you asked -- Mr. Johnston  
10 asked you about, "We're also having some internal discussions  
11 about whether we should use a transition manager, and if  
12 these activities will not cost us additional money in terms  
13 of direct or indirect fees," correct?

14       **A.** Yes.

15       **Q.** Now, if I can direct your attention to the responsive  
16 e-mail from Mr. Pennings on the next page, that Mr. Johnston  
17 did not go through with you, this is the second paragraph --

18               MR. GOLDSTEIN: If you would just blow that up,  
19 Max.

20 MR. GOLDSTEIN:

21       **Q.** The last sentence in that second paragraph, Mr. Pennings  
22 tells you, "The specialist transition management desk within  
23 State Street Bank Europe Limited executes trades through  
24 State Street Global Markets International Limited," correct?

25       **A.** Yes.

1 Q. "Which for its remuneration compares a portion of the  
2 spread with the most competitive bid-offer available," right?

3 A. Can I read it again?

4 Q. Sure. You can read it to yourself.

5 A. Yes. (The witness reads the document.)

6 Yes, that's correct.

7 Q. So what Mr. Pennings is telling you, in clear language,  
8 is that State Street Bank Europe Limited -- which is the  
9 entity that you ultimately contracted with, right?

10 A. Yes.

11 Q. And we'll get to the agreement that you had, but it was a  
12 three-party agreement between Dutch Doctors, State Street  
13 Global Advisors, and State Street Bank Europe Limited, right?

14 A. Yes.

15 Q. So what he's telling you here, which is June 15th --  
16 right?

17 A. Yes.

18 Q. He's telling you that, "SSBEL executes its trades through  
19 an affiliate broker-dealer," right?

20 A. Yup.

21 Q. And he's providing you clear notice that that  
22 broker-dealer, State Street Global Markets International,  
23 will earn money in executing those trades, right?

24 A. That's correct.

25 Q. And in the form of a spread, right?

1       **A.**   Yes.

2       **Q.**   And that's customary, meaning when a bank, such as State  
3       Street Bank Europe Limited, goes to the marketplace, it needs  
4       a broker-dealer to execute trades for it, right?

5       **A.**   Yes.

6       **Q.**   And that broker-dealer will, in turn, charge a markup,  
7       markdown, or some fee for the service it provides in the  
8       process, right?

9       **A.**   Correct.

10      **Q.**   And so he's telling you on June 15th, in no uncertainly  
11      terms, that SSBEL's broker-dealer affiliate will ultimately  
12      earn some remuneration for executing those terms, right?

13      **A.**   Correct.

14      **Q.**   And you testified that your understanding was that State  
15      Street Bank Europe Limited was operating in an agency  
16      capacity, right?

17      **A.**   Yes.

18      **Q.**   Given that understanding, as well as the e-mail that we  
19      just looked at and the contract that we'll look at in a few  
20      minutes, it was your understanding that, notwithstanding your  
21      understanding that State Street Bank Europe was acting in an  
22      agency capacity, the broker-dealer would still earn  
23      remuneration for the services that it provided, right?

24      **A.**   Yes.

25      **Q.**   Meaning there's nothing inconsistent with a bank

1 representing itself as acting in an agency capacity, and an  
2 affiliate broker-dealer charging a markup, markdown, or  
3 spread to perform its services in connection with a  
4 transition, right?

5 **A.** That's correct.

6 MR. GOLDSTEIN: Could we have Exhibit 38, please,  
7 Max.

8 BY MR. GOLDSTEIN:

9 **Q.** Mr. Haerden, this is an e-mail that Mr. Johnston went  
10 through with you, and you testified regarding your statement  
11 in the middle of the page, "Do the estimated trading costs  
12 include the fees that you will charge, and how much will  
13 these fees, (in basis points or cash amount) approximately  
14 be?"

15 Do you see that?

16 **A.** Yes.

17 **Q.** And you testified that it was your understanding or your,  
18 when you wrote this in your e-mail, that your use of the word  
19 "approximately" referred to the cash amount, not the basis  
20 points, right?

21 **A.** Yes.

22 **Q.** And my question in return is, you certainly never  
23 explained that that was your -- you never had a conversation  
24 with Mr. McLellan about what you were asking here, right?

25 **A.** No.



1     **Q.** And you're also -- did you talk to Mr. Pennings and  
2     explain to him what your understanding was, or did he simply  
3     respond to your e-mail?

4     **A.** He responded to my e-mail, because we did not have any  
5     detailed information on the charges yet at that stage.

6     **Q.** Right. And you used the word "do the estimated trading  
7     costs," right?

8     **A.** Yes.

9     **Q.** And you used the word "approximately," right?

10    **A.** Correct.

11    **Q.** And he responded, up top, "In the analysis, we have built  
12    in one basis point that the execution desk takes out of the  
13    spread," right?

14    **A.** Yes.

15    **Q.** So again, clearly disclosed that the execution desk is  
16    going to earn a spread, right?

17    **A.** Yes.

18    **Q.** And he said that, "So yes, the total implementation  
19    shortfall estimate does include all fees," right?

20    **A.** Yes.

21    **Q.** And he specifically also uses the word "estimate," right?  
22    "Shortfall estimate"?

23    **A.** No. Yeah, he used the word "shortfall estimate," but to  
24    my understanding, what this means, a shortfall estimate is  
25    the total expected cost that you can bear of changing a

1 portfolio. It did not relate, to my knowledge and  
2 understanding, to the one basis point fee. I did not see  
3 that as an estimate. I did see that as a specific hard  
4 number, and the estimates relates to the potential market  
5 volatility that you can incur when you trade those bonds.

6 **Q.** No doubt about it, that was your understanding, right?

7 **A.** Yeah.

8 **Q.** My question is, you never had this dialogue with  
9 Mr. Pennings, in connection with this e-mail, right?

10 **A.** No.

11 **Q.** And his responsive e-mail to you uses implementation  
12 shortfall estimate, right?

13 **A.** Yes.

14 **Q.** And so if we turn to Exhibit had 40, which is the  
15 ultimate contract that was executed by Dutch Doctors, and we  
16 go to the specific paragraph 4 -- paragraph 5, I'm sorry.

17 MR. GOLDSTEIN: Well, 4 and 5, Max.

18 BY MR. GOLDSTEIN:

19 **Q.** We can agree that there's nothing in the final contract  
20 between Dutch Doctors and State Street Bank Europe Limited,  
21 incorporating your understanding that the broker-dealer was  
22 only going to take one basis point, right?

23 **A.** This contact did not refer to the one basis point, if you  
24 mean that.

25 **Q.** Right. And obviously, regrettable from your side, if you

1 could do it over, you would incorporate the one basis points  
2 into the account? Would that be fair?

3 MR. JOHNSTON: Objection.

4 THE COURT: Sustained.

5 BY MR. GOLDSTEIN:

6 Q. Do you think you should have included the one basis point  
7 in the contract?

8 A. No, because I had the information already on paper by  
9 e-mail. And that was sufficient for me, because I had a  
10 paper trail that I could prove that it was one basis point  
11 that was going to be charged.

12 Q. And that was an e-mail that dealt with words such as  
13 "estimate" and "approximate," right?

14 MR. JOHNSTON: Objection.

15 THE COURT: Overruled.

16 BY MR. GOLDSTEIN:

17 Q. Correct?

18 A. That's correct.

19 Q. And the contract is the actual document that governs your  
20 relationship with State Street Bank Europe. That's your  
21 understanding, correct?

22 A. That is correct.

23 Q. And again, what it says, in paragraph 5, is that, "The  
24 transition manager is expressly authorized by the customer to  
25 execute portfolio transactions through its affiliated

1 broker-dealer." Do you see that?

2 **A.** Yes.

3 **Q.** So again, notwithstanding your understanding that State  
4 Street Bank Europe Limited was acting in an agency capacity,  
5 the actual contract specifically provides that State Street  
6 Bank Europe Limited's affiliate, it's broker-dealer, could  
7 also charge a markup or markdown for its services, right?

8 **A.** That's true.

9 **Q.** And it says that, "Bonds will be executed on a  
10 competitive, multidealer basis, demonstrating best execution  
11 and priced net as per market convention," right?

12 **A.** Yes.

13 **Q.** And that's fair, that is market convention, right, that  
14 bonds such as these will be priced net?

15 **A.** Yes.

16 **Q.** And Mr. Pennings is the signatory to that particular  
17 e-mail, correct -- I mean, that particular contract?

18 **A.** Yes.

19 **Q.** Now, you testified that an individual by the name of Lex  
20 Ravensbrgen who, I guess, was your superior at Dutch Doctors  
21 at the time, right?

22 **A.** Yes.

23 **Q.** And you were keeping him abreast of your conversations  
24 and your e-mails with Mr. Pennings and others at State  
25 Street, right?

1       **A.**    Yes.

2       **Q.**    And do you recall that -- you would forward e-mails that  
3       you would receive from Mr. Pennings, right?

4       **A.**    Correct.

5       **Q.**    And do you recall that he told you that he "has nothing  
6       against transition manager, if he does his job well. It can  
7       certainly be beneficial, but in the end, he's just a broker  
8       who has to earn his money, as well"?

9       **A.**    I don't recollect that.

10               MR. GOLDSTEIN: Your Honor, may I approach?

11               THE COURT: You may.

12       BY MR. GOLDSTEIN:

13       **Q.**    Mr. Haerden, I'm handing to you what is an original  
14       e-mail in your native language, as well as a translation.

15       **A.**    Uh-huh.

16       **Q.**    And what I would ask you to do is read to yourself --  
17       what I'm interested in asking you is whether or not reading  
18       this particular paragraph, that refreshes your memory in  
19       terms of what Mr. Ravensbergen had said to you.

20               And you can read it in whichever language you  
21       prefer.

22       **A.**    Yeah. So from my understanding, this e-mail is being  
23       translated.

24               THE COURT: I'm sorry. Have you had a chance to  
25       read that as long as you want? You had a chance to look at

1       that, right?

2               THE WITNESS: Yes.

3               MR. JOHNSTON: I just want to be clear to the  
4       witness, that he has access to the Dutch version, which is  
5       the original.

6               THE COURT: Yes, I think he knows that.

7               You can read it in Dutch, if you prefer.

8               THE WITNESS: No, but just my understanding, this  
9       e-mail is being translated to English for you?

10              THE COURT: But you can read it in Dutch, if you  
11       prefer.

12              MR. JOHNSTON: Well, he needs to be pointed to  
13       where in the document is the Dutch version.

14              THE WITNESS: Oh, no, it's here, behind, yeah.

15              THE COURT: If you wish to read it in Dutch, you  
16       can do that, that's fine.

17              THE WITNESS: Okay. I will do that in Dutch, yeah.

18              (Witness reads the document.)

19              THE WITNESS: Yes, I read the e-mail.

20       BY MR. GOLDSTEIN:

21       **Q.** And having read that, does that refresh your memory that  
22       your superior, Mr. Ravensberger, told you he "has nothing  
23       against a transition manager. If he does his job well, it  
24       can certainly be beneficial, but in the end, he is just a  
25       broker that has to earn his money, as well"?

1 Does that refresh your recollection?

2 **A.** Yes, that's correct.

3 **Q.** And Mr. Haerden, before I conclude, there was no  
4 ambiguity, from your perspective, that State Street Bank  
5 Europe Limited's broker-dealer affiliate, would be charging a  
6 markup or markdown in executing trades for Dutch Doctors,  
7 right?

8 **A.** That's correct.

9 **Q.** The ambiguity or disagreement you have is what they could  
10 fairly charge you in terms of those execution services,  
11 right? Meaning the e-mail that Mr. Pennings sent you led you  
12 to understand it was going to be one basis point.

13 **A.** That's correct.

14 **Q.** But there was no ambiguity on your part that there would  
15 be a spread, a markup/markdown charge, in connection with  
16 these execution services?

17 **A.** To my understanding, the markup would be one basis point,  
18 so that was clear to us when we received that e-mail; and  
19 that also answered the questions that we had, that they were  
20 going to charge a markup.

21 **Q.** And your understanding of that one basis point is based  
22 on an e-mail, not the contract, right?

23 **A.** That's correct.

24 MR. GOLDSTEIN: No further questions.

25 THE COURT: I inquire, Mr. Johnston?

1 MR. JOHNSTON: One question.

2 **REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

3 BY MR. JOHNSTON:

4 **Q.** Mr. Haerden, is one basis point approximately 1.5 basis  
5 points?

6 **A.** No, not to my memory.

7 **Q.** Is 4-and-a-half million euros approximately 3 million  
8 euros?

9 **A.** No.

10 MR. JOHNSTON: Thank. You.

11 THE COURT: Any redirect -- or recross, rather?

12 MR. GOLDSTEIN: No recross.

13 THE COURT: All right. Thank you very much, sir.  
14 You're excused.

15 We stand, with the schedule, where we were when we  
16 talked earlier?

17 MR. FRANK: Yes, we are.

18 THE COURT: So ladies and gentlemen, let me explain  
19 where we are. We're ahead of schedule for today. So we're  
20 done for the day. And the positive news -- I hope it's  
21 positive news for you -- is that tomorrow we will only need  
22 to go 9:00 to 1:00. We reserved this -- as you saw, we had  
23 several witnesses from Europe, and there's another witness  
24 from Europe tomorrow, and for various reasons we need to get  
25 them all done today and tomorrow. But the other witness we



1 have, the Government has coming from Europe, we'll be done  
2 with tomorrow before 1 o'clock, so it won't be any need to go  
3 into the afternoon to get people back home to where they're  
4 coming from.

5 So we're done for today. Tomorrow will be 9:00 to  
6 1:00; Thursday, no court; Friday, 9:00 to 1:00. We remain on  
7 track, the lawyers assure me, to finish the case on the  
8 schedule that we originally told you about. So that's good.

9 So don't discuss the case among yourselves, don't  
10 discuss it with anyone else, don't do any independent  
11 research, including, among other things, on the Internet.

12 And have a nice afternoon. I'll see you tomorrow  
13 morning. We resume at 9:00 a.m. Thank you for your  
14 attention.

15 All rise for the jury.

16 (The jury exits the courtroom.)

17 THE COURT: Okay. I'm happy to see you at 8:30,  
18 but if you don't anticipate any discussion, then we can meet  
19 a little later. I defer to the two of you as to whether  
20 it's --

21 MR. WEINBERG: I don't see any issues.

22 MR. FRANK: 9 o'clock is fine with us, Judge.

23 THE COURT: All right. Maybe ten of nine.

24 MR. FRANK: Ten of 9:00?

25 THE COURT: Just in case. Little by little.

1 All right. Have a good afternoon. Thank you very  
2 much, we're adjourned.

3 THE DEPUTY CLERK: This matter is adjourned.

4 (Court in recess at 3:49 p.m.)  
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**CERTIFICATE OF OFFICIAL REPORTER**

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 12th day of June, 2018.

/s/ RACHEL M. LOPEZ

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Rachel M. Lopez, CRR  
Official Court Reporter